Supreme Court of the United States

OCTOBER TERM, 1970

No. 5257

LOU BERTHA LABINE, NATURAL TUTRIX OF MINOR CHILD, RITA NELL VINCENT,
Appellant,

—v.—

SIMON VINCENT, ADMINISTRATOR OF THE SUCCESSION OF EZRA VINCENT,
Appellee.

APPEAL FROM THE SUPREME COURT OF LOUISIANA

INDEX

A. PROCEEDINGS IN THE FOURTEENTH JUDICIAL DISTRICT COURT
CALCASIEU PARISH, LOUISIANA

"Succession of Ezra Vincent, No. 13,527"

B. PROCEEDINGS IN THE COURT OF APPEAL, THIRD CIRCUIT, STATE OF LOUISIANA

"Lou Bertha Labine, Natural Tutrix of the minor child, Rita Nell Vincent vs. Simon Vincent, Administrator of the Succession of Ezra Vincent, No. 2912"

C. PROCEEDINGS IN THE SUPREME COURT OF LOUISIANA

"Succession of Ezra Vincent, No. 50 369"

14TH JUDICIAL DISTRICT COURT
PARISH OF CALCASIEU
STATE OF LOUISIANA

No. 13,527

SUCCESSION OF EZRA VINCENT

PETITION—Filed January 14, 1969

The petition of LOU BERTHA LABINE, Tutrix of the minor child, Rita Nell Vincent, with respect represents that:

1.

LOU BERTHA LABINE is the Tutrix of the minor child, Rita Nell Vincent.

2.

Rita Nell Vincent is the duly acknowledged child of the decedent, Ezra Vincent, and is therefore his sole heir and entitled to the entire net proceeds of this succession.

3.

In the alternative, Rita Nell Vincent is entitled to support and maintenance in the reasonable sum of One Hundred Fifty and no/100 ($150.00) Dollars per month.

WHEREFORE, LOU BERTHA LABINE as Natural Tutrix of the minor child, Rita Nell Vincent prays that:

(a) The Administrator of the succession, Simon Vincent be duly cited and served according to law.

(b) That a rule issue herein ordering Simon Vincent, Administrator of this succession to show cause, if any he has, before this Court at a date and time to be fixed by this Court, why Rita Nell Vincent should not be decreed to be the child and sole heir of Ezra Vincent, or in the alternative, why the succession of Ezra Vincent

should not pay support and maintenance for the minor child, Rita Nell Vincent.

(c) That said rule be made absolute and the minor child, Rita Nell Vincent, be decreed to be the sole heir of Ezra Vincent, or in the alternative, entitled to support and maintenance in the amount of One Hundred Fifty and no/100 ($150.00) Dollars per month.

SCOFIELD, COX & BERGSTEDT

By /s/ James J. Cox
126 West Kirby Street
Lake Charles, Louisiana

ORDER

Considering the above and foregoing petition:

LET a rule issue herein ordering Simon Vincent, Administrator of the Succession of Ezra Vincent to show cause, if any he has, on the 3 day of February, 1969, at 10:00 o'clock A.M. why the child, Rita Nell Vincent, should not be decreed to be the sole heir of Ezra Vincent and as such, entitled to the entire net proceeds of this succession, or in the alternative, why the succession of Ezra Vincent should not be ordered to pay unto LOU BERTHA LABINE, Natural Tutrix for Rita Nell Vincent, the sum of of One Hundred Fifty and no/100 ($150.00) Dollars per month for the support of Rita Nell Vincent. If this rule is contested, it must be placed upon the trial docket for assignment.

THUS DONE AND SIGNED at Lake Charles, Louisiana, in chambers on this 14 day of January, 1969.

/s/ Cecil C. Cutrer
District Judge

IN THE 14TH JUDICIAL DISTRICT COURT
PARISH OF CALCASIEU
STATE OF LOUISIANA

[Title Omitted in Printing]

ANSWER TO RULE FOR SUPPORT—Filed January 24, 1969

Now into Court, through undersigned Counsel, comes Simon Vincent, Administrator of this succession, who for answer to the rule to show cause on February 3, 1969, why the Administrator of this succession should not be ordered to pay unto Rita Nell Vincent, the alleged illigitimate acknowledged child, support, with respect, shows:

1.

Articles 1, 2 and 3 of plaintiff's petition are denied.

2.

Further answering, plaintiff shows that the minor child, Rita Nell Vincent, as the alleged illigitimate acknowledged child of the decedent, Ezra Vincent, is presently receiving a pension for her support from the Veteran's Administration in the sum of $40.00 per month, and a pension for her support from the Social Security Administration in the sum of $60.00 per month, making a total payment for her support in the sum of $100.00 per month.

3.

That the above support payments will continue until said minor child reaches the age of 21 years, and thereafter if she is still in need of support and is attending school.

4.

That said minor child is not in absolute need for alimony for support due to the fact that she is presently receiving the sum of $100.00 per month as set forth hereinabove, which is adequate for her maintenance and support.

WHEREFORE, defendant in rule prays that this answer be deemed good and sufficient, and that said rule be dismissed at plaintiff's cost.

By his attorneys,

/s/ James A. Leithead
of the lawfirm of Kaufman, Anderson, Leithead, Scott & Boudreau—P. O. Box 1299
117 West Broad, Lake Charles, La.

[Certificate of Service Omitted in Printing]

14TH JUDICIAL DISTRICT COURT
PARISH OF CALCASIEU
STATE OF LOUISIANA

Lake Charles, Louisiana, March 4, 1969

Court met, His Honor Jack C. Watson, Judge presiding, with Woodie Head, Deputy Sheriff, and Patty Cole Deputy Clerk of Court, in attendance.

* * * *

No. 13,527

SUCCESSION OF EZRA VINCENT

Case is placed on the Trial Docket for a fixing date.

* * * *

IN THE 14TH JUDICIAL DISTRICT COURT
PARISH OF CALCASIEU
STATE OF LOUISIANA

Lake Charles, Louisiana, June 2nd, 1969.

Court met, His Honor Cecil C. Cutrer, Judge presiding, with R. W. Holleyman, Deputy Sheriff, and Bess C. Wallace, Deputy Clerk of Court, in attendance.

* * * *

No. 13527

SUCCESSION OF EZRA VINCENT

James J. Cox, Esq., files a memorandum of law in support of the rule filed by Lou Bertha LaBine, Tutrix of the minor child, Reta Nell Vincent.

* * * *

No. 13,527

SUCCESSION OF EZRA VINCENT

This matter came on for hearing on the exception of no right of action filed by the Administrator of this succession to the rule filed by Lou Bertha LaBine, Tutrix of the minor, Reta Nell Vincent to have the minor recognized as the sole heir of decedent or in the alternative, to have this succession to pay unto the child the sum of $150.00 per month for her support. Present: James A. Leithead, Esq., counsel for Administrator, and James J. Cox, Esq., counsel for plaintiff-in-rule, Lou Bertha LaBine. Exception taken up, argued, and overruled by the Court. The matter is then taken up on the merits of the rule. Case is called, and Mr. Cox files into the record a joint stipulation of facts. Evidence adduced, closed and submitted, and for the oral reasons assigned, the rule for support is dismissed and the rule for inheritance or to be recognized as an heir of deceased by the Tutrix of the minor child is dismissed at her costs, and the Court declares that the heirs of Ezra Vincent are collateral, as set out in the petition.

* * * *

EXHIBIT P-2

LOUISIANA STATE BOARD OF HEALTH
PUBLIC HEALTH STATISTICS

CERTIFICATE OF LIVE BIRTH

BIRTH No. 117

Vincent Kots

1. Child's Last Name: Patterson — 1b. First Name: Retore — 1c. Second Name: nell

2. Sex: Girl — Single ☒ Twin ☐ Triplet ☐ — 4. If Twin or Triplet, Was Child Born 1st ☐ 2d ☐ 3d ☐ — 5. Date of Birth (Month, Day, Year): mar 15-62

6. Place of Birth (City, Town, or Location): Lakecharles — 6b. Parish: Calcasieu

6c. Name of Hospital or Institution (If not in Hospital or Institution give street address or location): 1116 Belden St — 6d. Is Place of Birth Inside City Limits? Yes ☒ No ☐

7. Usual Residence of Mother (City, Town or Location): Lakecharles — 7b. Parish: Calcasieu — 7c. State: Louisiana

7d. Street Address (If rural, give location): 1916 Belden st — 7e. Is Residence Inside City Limits? Yes ☒ No ☐ — 7f. Is Residence on a Farm? Yes ☐ No ☒

8. Full Name of Father: Ezra Vincent — 9. Color or Race of Father: Negro

10a. Usual Occupation of Father: Retired — 10b. Kind of Industry or Business — 11. Birthplace (City and State or Foreign Country): Westlake, La — 12. Age of Father (at time of this birth): 70

13. Full Maiden Name of Mother: Lue Bertha Patterson — 14. Color or Race of Mother: negro

15. Birthplace of Mother (City, State or Foreign Country): Shreveport, La — 16. Age of Mother (At time of this birth): 42

17. Previous deliveries to Mother (Do NOT include this birth)

a. How many OTHER Children are now living? 6 — b. How many OTHER Children were born alive but are now Dead? none — c. How many fetal deaths: 0

ALTERED JUN 6 1962

I certify that the above stated information is true and correct to the best of my knowledge. — 18a. Signature of Parent or Other Informant: Lue Bertha Patterson Retire — Parent ☐ Other ☐ — 18b. Date of Signature: mar 24-62

18c. Informant's Mailing Address: 1916 Beldon St Lakecharles La

I certify that I attended this birth and that the child was born alive on the date stated above. — 19a. Signature of Attendant: Caroline Taylor — M.D. ☐ Midwife ☐ Other ☐ — 19b. Date of Signature: mar 24-62

20. Date accepted by Local Registrar: May 30 1962 — 21. Signature of Local Registrar: P. Vasquez MD [illegible] — 22. Date filed by State Registrar: APR 2 1962

FOR MEDICAL AND HEALTH USE ONLY

I CERTIFY THAT THE ABOVE IS A TRUE AND CORRECT COPY OF A CERTIFICATE DULY REGISTERED WITH THE LOUISIANA STATE BOARD OF HEALTH, DIVISION OF PUBLIC HEALTH STATISTICS.

W. J. Rein M.D.	DEC 17 1962	A Ciaccio
STATE HEALTH OFFICER	DATE	STATE REGISTRAR

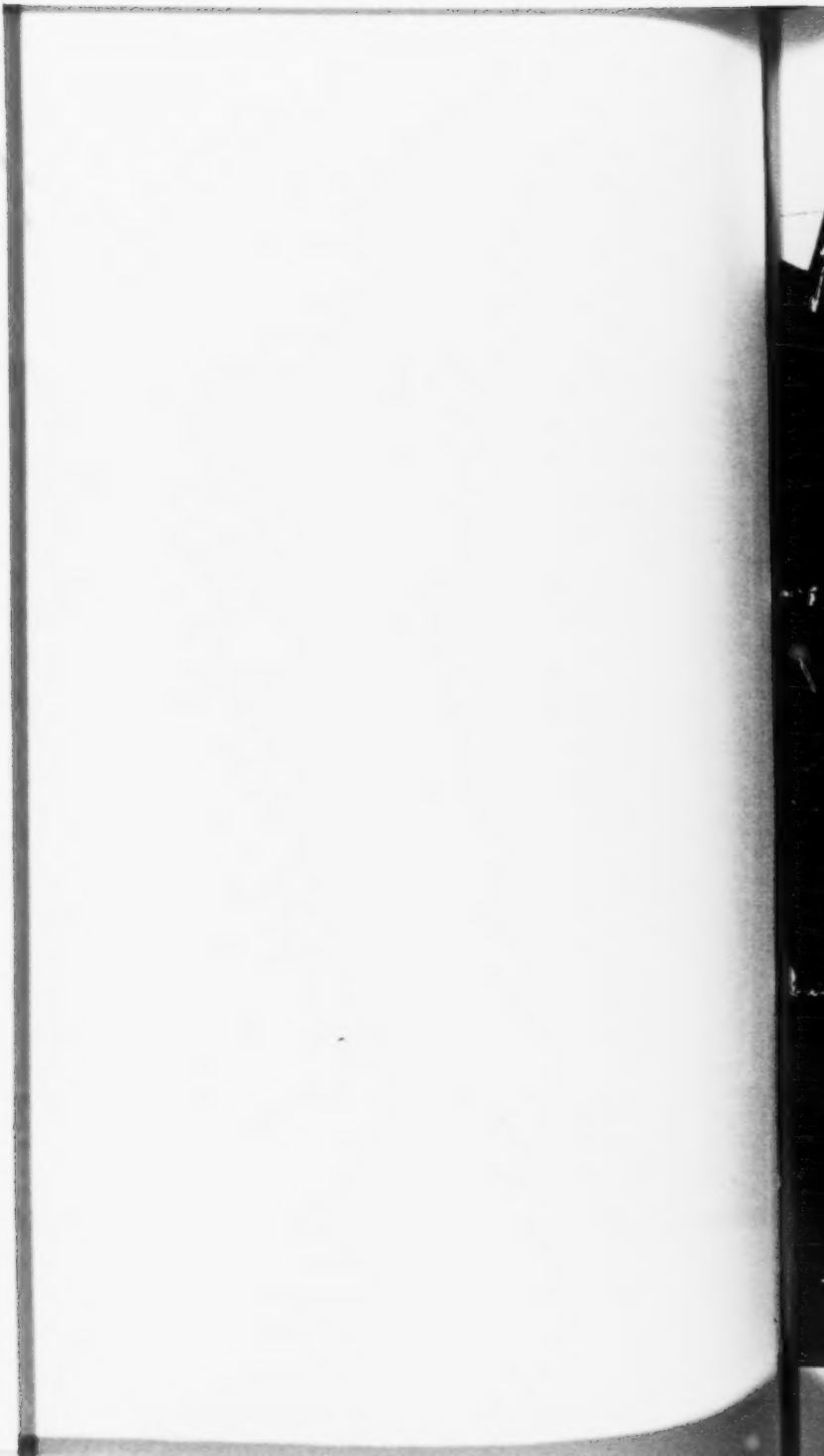

EXHIBIT P-3

[illegible], [illegible] 1962-10-367

ACKNOWLEDGEMENT OF PATERNITY

STATE OF [illegible] PARISH/COUNTY OF Calcasieu

Before me, the undersigned Notary Public, personally appeared

[illegible] of Route 1 Box 285, [illegible], La.
(Name of Affiant) (Address of Affiant)

[illegible] duly sworn, deposes and says: that he is the natural father of t[illegible] [illegible] Bertha Patterson on March 15, 19[illegible]
(Maiden name of Mother) (Date of Birth)

[illegible] Calcasieu [illegible] whose birth is recorded [illegible]
([illegible]) (Parish)

[illegible] PATTERSON [illegible]

[illegible] recorded [illegible]

Ezra Vincent
(Signature of Father)

[illegible] (City and State) 73 years
(Father's age at time of child's birth)

[illegible] of child's birth) Negroid
(Race of Father)

[illegible] and after first being duly sworn, the [illegible] mother [illegible] is the natural father of the
(Name of Father)

above named child born to her on the date and place mentioned above.

Maxine Brown — The Bertha Patterson
(Witness) (Signature: Maiden name of mother)

Almeta L. West — 1916 Belden St. Lake Charles, La.
(Witness) (Present address of mother)

[illegible] married to each other, please [illegible] date and place
[illegible] (Date of Marriage) (Place of Marriage)

Sworn to and subscribed before me this 10th day of May 19 62

My commission expires at death — [signature]
(Signature and Seal of Notary Public)

THIS FORM NOT ACCEPTABLE UNLESS SIGNED BY TWO WITNESSES.

"IF BOTH PARTIES DO NOT APPEAR BEFORE THE SAME NOTARY, PLEASE FORWARD SIGNED AFFIDAVIT TO SECOND PARTY WITH INSTRUCTIONS TO HAVE NOTARY PREPARE AFFIDAVIT ON THE REVERSE SIDE IN ACCORDANCE WITH THE PROPER AFFIDAVIT ON THE FACE HEREOF AND IN THE PRESENCE OF TWO WITNESSES."

DIVISION OF PUBLIC HEALTH STATISTICS
LOUISIANA STATE BOARD OF HEALTH

corrected 6-6-62 bg

FOURTEENTH JUDICIAL DISTRICT COURT
PARISH OF CALCASIEU
STATE OF LOUISIANA

EXHIBIT D-1

I CERTIFY that the earliest index of Marriages in the office of the Clerk of Court, Calcasieu Parish, Louisiana, goes back to the year 1910 (April 25, 1910). The earlier indexes were destroyed in the Court House fire in 1910.

Lake Charles, Louisiana, June 2, 1969.

/s/ Gordon E. Stein
Dy. Clerk of Court
Calcasieu Parish, Louisiana

IN 14TH JUDICIAL DISTRICT COURT
PARISH OF CALCASIEU
STATE OF LOUISIANA

[Title Omitted in Printing]

STIPULATION AS TO FACTS—Filed June 2, 1969

It is stipulated and agreed that if the witnesses were sworn and testified in the above entitled and numbered cause, and the available documentary proof introduced, that the following facts would thereby be established, and the parties hereto agree to the same, the evidence of which, except for this agreement, need not be adduced upon the trial, the facts of the case being stipulated to be as follows:

1) That Ezra Vincent died intestate at the age of 76 years, on September 16, 1968, in Rapides Parish, Louisiana, where he was hospitalized in the Veteran's Hospital for treatment.

2) That the decedent had his domicile and residence for many years prior to his death in Calcasieu Parish, Louisiana, where he owned movable and immovable property.

3) That the decedent was married to Alma Prater Vincent in 1920, and they were divorced in Jefferson County, Texas, by judgment dated March 13, 1953. No children were born of this marriage. The decedent never remarried.

4) The decedent never adopted any children, nor was he ever adopted by anyone. No children were born of any marriage.

5) By Notarial act, dated May 10, 1962, the decedent legally acknowledged to be the natural father of the minor, Rita Nell Vincent, born March 15, 1962.

THUS ENTERED INTO AND SIGNED at Lake Charles, Louisiana, on this 31 day of May, 1969.

/s/ James J. Cox
Attorney for Lou Bertha La-Bine, Tutrix for the minor, Rita Nell Vincent.

/s/ James A. Leithead
Attorney for Simon Vincent, Administrator of the Succession of Ezra Vincent.

IN 14TH JUDICIAL DISTRICT COURT
PARISH OF CALCASIEU
STATE OF LOUISIANA

[Title Omitted in Printing]

TRANSCRIPT OF TESTIMONY

LOU BERTHA LABINE,

petitioner, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. COX:

Q State your full name, please.
A Lou Bertha Labine.
Q Mrs. Labine, are you the mother of the minor child Rita Nell Vincent?
A Yes, sir.
Q Was this child born of a natural union between yourself and Ezra Vincent with whom you lived and resided up until the time that he left for his—
MR. LEITHEAD: I object to that, Your Honor, as leading the witness. I object to the living and residing and so forth.
THE COURT: It's a leading question.
MR. COX: I will restate it.
Q Was this child born of a natural union between you and Ezra Vincent, Mrs. Labine?
A Yes, sir.
Q Now did you live and reside with Mr. Vincent?
A Yes, sir, part time.
Q And during what period of time was that?
A From '61. I met him in '61; the baby were born in '62. '63, '64, '65, '67, '68, up until he died I were there.
Q Up until the time that he died?
A Passed, yes, sir. I was the one that taken him to the hospital in Alexandria. I were with him.

Q Were you notified as next of kin when he died at the hospital?
A Yes, sir, I notified his brothers.
Q You notified his brothers?
A Yes, sir, I did.
Q All right. Now, Lou Bertha, do you know whether or not Ezra's mother and father were married?
A No, sir, I don't even know them.
Q Now do you know whether or not the people that you refer to as his brothers, do you know whether or not they were born of the same union, or whether they were born of another union, or what?
A No, sir, I don't know. I know that he say they are brothers, but to know they are the same father—by the mother and father I do not know that.
Q And you did not know the mother and father—
A No, sir.
Q —or know of their marriage or anything like that?
A No, sir, I didn't.
Q Now do you have living with you Rita Nell Vincent?
A Yes, sir, I have her with me.
Q Now did you at my request prepare a list of items, just generally, that involved expenses for the support of this child?
A Yes, sir, I have.
Q Did you prepare that at home and then did we go over it, and did you make it out in smooth, and do you have it there with you?
A I have it here with me. I was at home.
Q All right. You may refer to that.
A All right. The money—expenses for Rita Nell, grocery is $60.00 per month, school supplies, $9.30.
Q Is that school supplies or school lunches?
A School lunch, I'm sorry. School lunch.
Q All right.
A And clothing, $15.00. Baby Sitting, $10.00.
Q Baby sitting, is that because you work?
A Because I work. I working.
Q All right. And what is the amount on that?
A I have that as $10.00 per month.

Q All right.

A Doctor and dentist work, $20.00 a month. Rent, $20.00 a month.

Q Lets examine that item a minute. Are you buying or renting a piece of property.

A I'm buying.

Q How much do you have to pay monthly?

A I pay from $80.00 a month to $100.00 a month.

Q It depends on what now?

A According to when I am behind. I pay $20.00 to catch up.

Q Is that a penalty you have to pay if you are late in making payment?

A Well, you have to pay interest, more interest, if you are late.

Q Now did you figure then, attributing some portion of it to her, that her portion is $20.00?

A Yes, sir, a portion of it.

Q All right. And her toilet tissue—toilet supplies, like teeth—her teeth brush and soap is $10.00 per month. Sunday school and church, $5.00 per month.

Q Now are you-all active in a church?

A Yes, sir, she belong to church. She been baptized.

Q Do you have one child who is going to McNeese?

A Yes, sir; Sheron Labine.

Q How do you spell that?

A S-h-e-r-o-n. Sheron Labine.

Q All right. Now is she active in church also?

A Yes, she's active. She is leaving on the 13th of next month, this month, for mission in Florida, Miami, Florida.

Q Are you bringing Rita Nell Vincent up in the same way?

A Yes, sir, I am.

Q All right. Go on with the items.

A Her toys for her is $20.00 a month.

Q Does that include recreation—

A Recreation, records, dolls, books and things.

Q All right.

A And the house keepup, $10.00 per month.

Q That's her share of the cost of maintaining your household and keeping it up?

A That's right.

Q All right.

A And school supplies, $5.00. Transportation, $3.00. Miscellaneous, $5.00.

Q All right. So that would amount to $192.30. These are things that you incur every month, is that right?

A Yes, every month that I have to . . . cost of living.

Q All right. Since the death of Ezra Vincent have you been maintaining this child and keeping her up and spending money?

A Yes, sir, I do.

Q Now where do you work?

A I work at Memorial Hospital.

Q And, of course, you are going to continue as tutrix of the child to maintain her and keep her up?

A Yes, sir, that's right.

MR. COX: I tender the witness.

CROSS-EXAMINATION

BY MR. LEITHEAD:

Q Lou Bertha, you didn't know Ezra but from 1961?

A I met him in 1961.

Q And where did you-all meet?

A We met right there—right here on the parking lot and then I went out to his house, in Mossville.

Q In Mossville?

A Yes, sir, lived in Mossville.

Q Did you maintain a home, or did all that to him, during all that period of time in Lake Charles?

A What is it?

Q Did you maintain a home in Lake—

A How many children I have; I'm a mother of eight children and ten grandchildren.

Q And how many times have you been married?

A How many—I've been married twice.

Q And who were those two times to?

A Well, do that have to be consider into this?

Q Well, . . .

THE COURT: Just answer the questions.
THE WITNESS: Okay.
Q Who were you married to?
A I were married to Eugene Labine.
Q And when did that marriage terminate?
A When did that marriage came—in '43.
Q And did he pass away?
A Yes, sir, he is. He did.
Q How many children did you have by him?
A I had three kids by him.
Q And who did you marry next?
A I married Eugene Labine. I mean, James Brooks. That were my first time. I didn't have any children for him.
Q And you don't have any children by James Brooks?
A No, sir, I don't.
Q And the other five children were born out of wedlock?
A Without a wedding, yes, sir.
THE WITNESS: Okay.
Q You know his brothers and sisters; Ezra's brothers and sisters? Did you know them?
A I just—I know of them. I don't know them personally. I know this—I know him more than I know any of them because I'm the one—I'm the one called him the night before we went to Alexandria.
Q Did Ezra tell you who his brothers and sisters were?
A Well, yes, he told me; Wilbur, Ralph. He didn't—Ralph.
Q He spoke of his family?
A That's right; but Simon, he didn't care nothing about Simon. He say Simon just one of those out the way.
Q And you in fact called Wilbur, did you?
A Yes, sir, I called Wilbur.
Q And you talked with him at the wake?
A Yes, I talked to Wilbur at the wake. And I talked to Wilbur before—
Q How much money do you make—excuse me, I didn't want to interrupt you. Go ahead.

A Okay.
Q What did you want to say?
A I say I talked to—I discussed with Wilbur when we got ready to go to Alexandria. He told Wilbur that I was taking him.
THE COURT: I am going to overrule the objection to get our record straight on it.
A Yes, sir.
Q How much money are you receiving?
A I'm receive $60.00 from social security, $40.00 from the Veteran.
Q That's each month?
A That's right. Each month is right.
Q A hundred dollars a month?
A That's right.
Q And you went down and made the application?
A No, sir, I didn't make the application.
Q You didn't go down to the Veterans office and sign?
A Oh, yeah, I had to sign after Ezra had passed, sure, because it's due her. That's right.
Q But after Ezra passed away you went down and made the application?
A Well, sure.
Q And also went up to the social security office?
A Well, what—he had signed up for her in '65 for her social security. He did that himself, and then I had to go down because the money was sent to me.
Q That was one of the reasons why Ezra wanted to acknowledge the child so you would get this social security and Veterans?
A Oh, no.
Q It wasn't?
A No, sir.
Q He wasn't thinking about that?
A No, sir, He didn't think anything. He recognized his child all the way. He did not consider that.
Q But you are getting $100.00 a month?
A That's right, from—that's right.
MR. LEITHEAD: That's all.

MR. COX: Since we have gone into this, and this is —under my objection, and under a note of evidence, Your Honor, in order to protect our record.

THE COURT: Certainly.

REDIRECT EXAMINATION

BY MR. COX:

Q Mr. Vincent was—as the father of Rita Nell, you were receiving social security prior to Mr. Vincent's death? For her support?

WILBUR VINCENT,

being called as a witness by the defendant, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LEITHEAD:

Q Would you state your name and address?
A Wilbur Vincent, 875 Grant, Beaumont, Texas.
Q Now you are the brother of Ezra Vincent?
A Yes, I am.
Q Now where did the family, the Vincent family, live?
A Well, they lived on the . . .
Q Your mother and father, where did they live?
A Well, they lived on—I wouldn't know the proper name. They didn't have a special address.
Q Well, is it some kind of community they call it?
A Oh, Mossville.
Q Mossville, over near Westlake?
A Yes.
Q And what was your father's name?
A Eliza Vincent.
Q And what was your mother's name?
A Priscilla Vincent.
Q Did they own land over there?
A Yes, they did.
Q And what did your father do for a living?

A He farmed and raised stock.
Q Now how old are you, Wilbur?
A Fifty-eight.
Q Did your mother and father live in the Mossville community all of their lives that you know of?
A Oh, all that I know of.
Q And when did you father pass away?
A It was in '37.
Q And your mother, when did she pass?
A '40.
Q And did they pass away over at—in their home in the Mossville community?
A Yes, they did.
Q Is the old home place still standing there?
A There is no home—no building there. The land is still under the Vincents.
Q Well, what happened to the building, the home itself?
A Some of them were moved, and—some of the other families moved them to some other place. They moved out near the community. They moved the old buildings; tore them down.
Q They were either torn down and moved away?
A Yes.
Q There is nothing on the land now?
A No.
Q When was that done, about, do you know?
A No, I wouldn't know exactly. It was somewhere probably in the late fifties.
Q Now did you grow up in the Mossville community as a boy?
A Yes, I did.
Q And did you have any brothers and sisters?
A Yes.
Q Did they grow up in the Mossville community with you?
A Yes.
Q Did you-all live in the—in your mother and father's home over there?
A Yes.
Q Where did you-all go to school?

A Went to Mossville school.

Q Did all of you have the name Vincent?

A Yes.

Q Were you known by the name of Vincent in the community?

A That's right.

Q Was your—did you-all belong to any church over there?

A Mount Zion Baptist.

Q Do you know the name of your grandfather?

A Yeah, he was Elisa Vincent, Sr.

Q Well, that's you—yeah. Well, what's—did he have a name that he went by that people knew him by?

A Doc.

Q Was he ever a minister?

A Yes, they tell me he was, but I have never heard him preach, but they tell me he was a minister.

Q What church was he connected with?

A Mount Zion Baptist.

Q Could you name—give us the names of your brothers and sisters?

A Yes. You mean deceased or . . .

Q Well, give the ones that are living now and then the ones that are dead.

A The living is Simon Vincent, Lottie Vincent Rogers, the next is Laura Vincent Ryan, and Ralph Vincent, and Wilbur Vincent.

Q Those are the ones that are living now?

A That's right.

Q Now do you have any that have died?

A We have—the first one was Cornelius Vincent, Douglas, Hester, Sally, Chester, Rosie Vincent Kee, and Ezra Vincent.

Q Now how many children altogether were there in the family?

A There were twelve.

Q Do you know whether or not Chester Vincent died leaving any children?

A Yes.

Q And did Rosie Vincent Kee die leaving any children?

A Yes.

Q Did Cornelius Vincent leave any children?
A No.
Q Douglas?
A No.
Q Hester?
A No.
Q Sally?
A No.
Q And Ezra left no other children except this—that they claim, this acknowledged child? Ezra didn't have any children by any marriage?
A No, not by marriage.
Q Now which—Ezra was seventy-six years of age when he died. Was any of these children born before Ezra?
A Only Cornelius.
Q Did you and your family farm, do farming operations over there?
A Yes.
Q Did you visit among—as a family group among other neighbors and relatives?
A Yes, we did.
Q Your father and mother provided for you during your childhood?
A Yes?
MR. LEITHEAD: I have no further questions.

CROSS-EXAMINATION

BY MR. COX:

Q Wilbur, do you have a birth certificate?
A No, I don't.
Q Do you know anything about the circumstances of the marriage of your father and mother?
A No, sir, I sure don't.
Q Did you ever try to get a birth certificate?
A I made one after—when they told me I needed it, and then after they told me I didn't need it I didn't continue.
MR. COX: That's all I have.

(Witness steps down.)

MURIEL RIGMAIDEN,

called as a witness by the defendant, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LEITHEAD:

Q Would you state your name?
A Muriel Rigmaiden.
Q Where do you live, Muriel?
A Mossville.
Q That's over near Westlake?
A Yes, sir.
Q And how old are you, Muriel?
A I'm sixty-five; born in 1904, February 3.
Q And where have you lived all your life?
A Mossville.
Q Did you know Elisz Vincent, Jr. and his wife, Priscilla Vincent?
A Yes, sir.
Q Did you know them well?
A Yes, sir.
Q Did they live near where you live?
A Oh, about a mile and a half, or two miles, apart.
Q Did you ever go over to their home?
A Plenty. Lots of times. About near two or three times a week go and play with the children.
Q And did you know their children?
A Yes, sir.
Q When you went over there did you go over there to visit or to work, or—
A Well, sometime I go over there to visit and play with the children, and then some when he would be farming I'd generally go over there and help them plow.
Q Were they well known—Elisa Vincent and his wife, were they well known in the community?
A Yes, sir.
Q Which one of the children that you played with when you were playing with them?

A I played with one they called Wilbur, and Simon and Ezra were bigger than me, and one called Chester, and one they call—I can't call his name now. The one that died there. I forget his name.

Q Douglas?

A The one that died. Douglas. It wasn't his right name.

Q Well, if you don't remember that's all right. It was one of them that died?

A Yes, sir. I played with him a plenty.

Q Was Elisa Vincent, Jr. and his wife recognized in the community as man and wife?

A Yes, sir.

Q Do you know which church they belonged to?

A Mount Zion Baptist Church.

Q And which church do you belong to?

A Mount Zion Baptist Church.

Q And did you see them at church at functions and meetings?

A Yes, sir. They passed right by my house. They had to pass by my house to go to the church at that time.

Q You said that—did you say—I don't know whether you—did you go to school over in the Mossville community?

A Yes, sir.

Q Did you go to school with any of the children?

A Yes, sir.

Q Did they go by the name of Vincent?

A That's right.

Q And they all lived—all the children lived over there in the Vincent home?

A Yes, sir.

Q And do you know whether or not their mother and father provided for them?

A Well, all I can see they did everything they could for them, and in my eyes just like any other man would do.

Q Do you know the name of Elisa Vincent, Jr.'s father?

A Well, that's—yes, sir.

Q What was his name?

A Doc. We called him Uncle Doc all time.
Q Uncle Doc?
A Yes, sir, that's what we called him.
Q Well, was he ever connected with the Mount Zion Church?
A Yes, sir, he was preacher.
Q Did you ever hear him preach?
A Yes, sir.
Q You are kind of connected with the family in some way, Muriel, the Vincent family?
A Yes, sir.
Q What is that relationship?
A I don't know just exactly what we call—I'd call him Cousin Elisa, and his mother, I call her Cousin Cilla.
Q Cousin Cilla.
A And so I don't know what—and to go back to the right end of it I would have to hunt that up a little while.
MR. LEITHEAD: I have no other questions.

LENON BRAXTON,

called as a witness by the defendant, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LEITHEAD:

Q Would you state your name and your residence?
A Lenon Braxton. I live at Mossville.
Q And how old are you, Lenon?
A Seventy.
Q And how long have you lived in Mossville?
A All my days.
Q Did you know Elisa Vincent, Jr. and his wife, Priscilla?
A Yes, sir.
Q And did they live in Mossville also?
A Yes, sir.
Q Have you ever been over to their home?
A Yes, sir.

Q Were you over there at their home when you were a young boy?
A Yes, sir, almost all while I was growing up.
Q And what would you go over there for?
A I would go over there to visit the boys.
Q You played with the boys?
A Yes, sir.
Q Did you ever work on the farm?
A No, sir.
Q Do you ever remember anything particularly that the boys did there when you went over there?
A Oh, we would go in swimming.
Q Did Elisa, Jr. and his wife, Priscilla, live there as man and wife?
A Yes, sir.
Q They had their children living there?
A Yes, sir.
Q Do you know if they belonged to a church?
A Yes, sir, they belonged to Mount Zion Baptist Church.
Q And do you know whether or not the children went to school?
A Yes, sir, I went to school with some of them.
Q You went to school with them?
A Yes, sir.
Q And which school did you-all go to?
A Mossville.
Q Did they all go by the name of Vincent?
A Yes, sir.
Q Do you remember Elisa Vincent, Jr.'s father?
A Yes, sir.
Q And what was his name?
A Well, we called him Doc Vincent.
Q And was he ever connected with the church?
A He was paster of Mount Zion during—before he died.
Q Did you ever hear him preach?
A Oh, yes, sir.
Q Did you ever see Priscilla Vincent and her husband at different meetings?
A Yes.

Q Neighbors?
A Yes, sir.
Q Different groups?
A Yes, sir.
Q Did they always conduct themselves as man and wife?
A Yes, sir.
Q They always acknowledged the children as their children?
A Yes, sir.
Q Now did you know them from the time you were a boy up until the time of their death?
A Yes, sir.
Q Do you remember if you went to the funeral or not?
A What's that?
Q Did you go to the funeral of Elisa or his wife?
A No, sir, I don't believe I went to his funeral. I wasn't at—I was in Vinton then during the time he died.
MR. LEITHEAD: I have no other questions.

CROSS-EXAMINATION

BY MR. COX:

Q Did you know all the children, Mr. Braxton?
A Yes, sir.
Q Can you name them?
A I don't know all of their names, but I know them all.
Q So you don't know the names of all the children?
A No, sir.
Q So you wouldn't know whether some of the ones that Wilbur says were brothers and sisters that died first or died later, you wouldn't know about those things?
A I know them, but I just don't know all of them's names.
Q Which ones do you know?
A I know Wilbur, Ezra, and Simon, the one they call Douglas—we called him Jack, and Rosie, Hester, Sally and Laura. I believe that's all of them I can remember.

Q That's all you remember of the children?
A That's all I can remember.
Q And you don't know anything about the circumstances of Elisa and Priscilla's marriage, if there was one?
A No. They must have been married because she was a missionary of Mount Zion Baptist Church, and they wouldn't let her stay in that church if they hadn't been married.
Q Did you see any of the children baptized?
A Yes, sir.
Q Which ones?
A Wilbur and Red and Chester.
Q How old are you, Mr. Braxton?
A Who me?
Q Yes, sir.
A I was born March 18, 1899.
Q You saw Wilbur baptized?
A Yes, sir.
Q You were there at his baptizm?
A Yes, sir.
Q And who else did you see baptized?
A I saw one called Chester. I saw him baptized, too.
MR. COX: That's all I have.

(Witness steps down.)

EDGAR MOUTON,

called as a witness by the defendant, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LEITHEAD:

Q Would you state your name, please?
A Edgar Mouton. Mossville.
Q You live in Mossville?
A Yes, sir.
Q And how old are you, Edgar?
A Sixty-four at present.

Q Have you lived in Mossville all your life?
A All my life.
Q Did you know Elisa Vincent, Jr. and his wife, Priscilla Vincent?
A Yes, sir, I did.
Q And when did you first become acquainted with them; about when?
A Well, we grew up together. After—I was born in Mossville. And naturally so, as children grow up, they learn the old folks names, and—in other words, I knew them every since I been big enough to remember.
Q You knew the children of Elisa Vincent, Jr.?
A Oh, yes, I knew them all but the oldest one, the one that—
Q That one—
A The one that Wilbur mentioned that died.
Q Cornelius?
A Cornelius. No, sir, I didn't know her.
Q Did you ever go over to their home?
A Oh, yes.
Q Did they live there as man and wife with their family?
A Yes, sir.
Q Did you ever do any work over on the farm?
A Oh, yes, sir.
Q What did you do there?
A Well, they was rice farmer, and highland farming, too; picked peas, cut rice, shock rice, thrash rice, haul rice, pull corn, pick peas, and everything.
Q Did you know whether or not the children went to school over there?
A Oh, yeah.
Q Did you go to school with some of them?
A Yes, sir.
Q Did they go by the name of Vincent?
A Vincent; yes, sir.
Q Were they well known people in the community?
A Well known.
Q Did you know Elisa Vincent, Jr.'s father's name?
A Yes, sir, I knew him by the name of Uncle Doc.

Q Uncle Doc?
A Yes, sir.
Q Was he a preacher?
A He was a minister. That's right.
Q At the Mount Zion Church?
A Mount Zion Baptist Church.
Q Do you go to that church?
A Yes, sir.
Q Do you know when it was destroyed by fire, Edgar?
A Well, no, it's been destroyed twice. It was destroyed in 1918 by the hurricane storm, the 6 of August, and the fire, I don't remember when the fire destroyed the church.
Q Was it after 1918, or before?
A What?
Q The fire.
A The fire was before 1918.
Q Did you say that you had visited with the Vincents in their home?
A I did.
Q Did you ever see them out at church?
A Sure.
Q The children—were the children, do you know, were any of the children baptized in church?
A Yes, sir.
Q Were you there when any of them were baptized?
A I was there when Wilbur and Chester.
Q And as far as you know they had a reputation of being—Elisa Vincent, Jr. and his wife, as being man and wife and raising a family?
A Man and wife; yes, sir. As far as I know of.
Q You weren't present when they got married?
A Oh, no.
MR. LEITHEAD: No other questions.

CROSS-EXAMINATION

BY MR. COX:

Q Mr. Mouton, how old are you, sir?
A Sixty-four.
Q Are you older than all the children?

A No, I'm not.
A Yes, sir.
MR. LEITHEAD: I have no other questions.

CROSS-EXAMINATION

BY MR. COX:

Q Mr. Vincent, who died first, your mother or your father?
A My father died first.
Q About when was that?
A In 1937.
Q And then who died?
A My mother died after he died.
Q You don't know whether or not your mother and father celebrated a marriage, do you?
A Well, yes, sir, they had a marriage.
Q How do you know that?
A I saw their license once. They had got old and—where she had kept them all the time. But I didn't—
Q Where did they get married?
A —particular read on the license.
Q You didn't read it?
A No, sir.
Q You don't know if it was a license or not, do you?
A Well, it supposed to have been a marriage license.
Q Where were they married?
A What's that?
Q Where were they married?
A In Mossville there.
Q They were married in Mossville?
A I understood they married in Mossville. She said she was sixteen years old when they got married.
Q You heard Mr. McMarion testify?
A Yes, sir.
Q Did you see him at your mother's funeral?
A No, sir.
Q You did not?
A No. I wasn't there.
Q Were you at your mother's funeral?

A No.
Q Where were you, sir?
A I was away. I was in Washington, D.C.
Q You were in D.C. and didn't come down for the funeral?
A No.
MR. COX: That's all I have.

(Witness steps down.)

MR. LEITHEAD: At this time, Your Honor, we offer into evidence a certificate from the Clerk of Court showing that if Mr. Gordon Steen, a Deputy Clerk—showing that there is no index to marriages earlier than April 25, 1910. I offer that as D-1.
THE COURT: Let it be received in evidence.
MR. LEITHEAD: Also I offer and introduce in evidence a certified copy of a warranty deed, dated August, 1911, for the purpose of showing that Elisa Vincent, Jr. at that time was married to Priscilla Vincent. I mark it D-2.
THE COURT: Let it be received in evidence.
MR. LEITHEAD: We rest, Your Honor.
THE COURT: Mr. Cox, any rebuttal?
MR. COX: Your Honor, by stipulation we offer, introduce and file into evidence what is already in the record, which is the inventory of the Succession of Ezra Vincent, which is, as I understand it, a part of this record herein already. We make it a joint offering to show the contents of the succession.
THE COURT: Let it be received in evidence.

(Closing argument of counsel.)

THE COURT: The right of this alimony is not to be confused with alimony under our marital laws, but it is another type of alimony which is due a child under circumstances if the need is established. The evidentiary problem here is whether there is need for the child support. Now the general award for support of a child under normal circumstances is approximately $60.00 to $75.00 a month. That's about the usual range for each child of the age of this child here. I think that the

$100.00 a month as it stands now would be ample to support a child of the age of this child, which is eight years of age, thus, the requirement of need has not been met.

The next problem is the law of inheritance. I am fully cognizant that there is an excellent opportunity, or excellent chance, that the jurisprudence in the Levy and the Glona cases will be ultimately extended to illegitimate children who have been acknowledged, such as we have in this case. The trend is in that direction, and there is some authority that's already going in that direction in other States, but we have no Louisiana jurisprudence following those decisions so far.

For those reasons I am going to rule that the petition for alimony shall be dismissed. The petition for inheritance, or to be recognized as an heir of the deceased, Ezra Vincent, by the tutrix of the minor, will be dismissed at her costs, and that the collateral heirs of Ezra Vincent are the heirs as set out in the petition and as shown here by the evidence.

* * * *

IN THE 14TH JUDICIAL DISTRICT COURT
PARISH OF CALCASIEU
STATE OF LOUISIANA

No. 13,527

SUCCESSION OF EZRA VINCENT

JUDGMENT—June 9, 1969

This matter came on this day to be heard, having been regularly fixed for trial, upon a rule filed by Lou Bertha LaBine, Tutrix of the minor child, Rita Nell Vincent, against Simon Vincent, Administrator of this succession, to show cause why the minor child, Rita Nell Vincent, should not be decreed to be the sole heir of Ezra Vincent, deceased, or in the alternative, why the succession should not be ordered to pay unto said child, alimony for her support, and upon an Exception of No Right of Action filed by the Administrator of this succession;

The Court considering the pleadings, the law and the evidence, for reasons orally assigned;

IT IS ORDERED, ADJUDGED AND DECREED that the Exception of No Right of Action filed by the Administrator of this succession be and the same is overruled.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the rule to show cause why the minor child, Rita Nell Vincent, should not be decreed to be the sole heir of Ezra Vincent, deceased, or in the alternative, why the administrator of this succession should not pay alimony for the support and maintenance of said minor child, be and the same is hereby dismissed.

All costs of this proceeding to be paid by plaintiff in rule.

JUDGMENT RENDERED in Open Court at Lake Charles, Louisiana, on June 2, 1969.

JUDGMENT READ AND SIGNED in Open Court at Lake Charles, Louisiana, on this 9 day of June, 1969.

/s/ Cecil C. Cutrer
District Judge

IN 14TH JUDICIAL DISTRICT COURT
PARISH OF CALCASIEU
STATE OF LOUISIANA

[Title Omitted in Printing]

Lake Charles, Louisiana, June 9th, 1969.

Court met, His Honor Cecil C. Cutrer, Judge presiding, with R. W. Holleyman, Deputy Sheriff, and James R. Andrus, Deputy Clerk of Court in attendance.

No. 13,527

SUCCESSION OF EZRA VINCENT

Present: James A. Leithead, Esq.
Judgment read and signed.
See Decree.

* * * *

[Dec. 18, 1969]

13,527

No. 2912

COURT OF APPEAL
THIRD CIRCUIT
STATE OF LOUISIANA

[Mar. 3, 10:08 A.M. '70. Office of Clerk of Court, Calcasieu Parish, Louisiana.]

SUCCESSION OF EZRA VINCENT

(LOU BERTHA LABINE, Natural Tutrix of the minor child, RITA NELL VINCENT, PLAINTIFF-APPELLANT

vs.

SIMON VINCENT, Administrator of the SUCCESSION OF EZRA VINCENT, DEFENDANT-APPELLEE)

Appeal from the Fourteenth Judicial District Court, Parish of Calcasieu; Honorable Cecil C. Cutrer, District Judge, Presiding.

Before TATE, CULPEPPER, and MILLER, Judges.

TATE, Judge.

This is a contest over the estate of Ezra Vincent. His illegitimate daughter, through her tutrix, claims his estate. The trial court dismissed the claim. The tutrix appeals.

The decedent died intestate. He was survived by no spouse, ascendants, nor legitimate descendants. An administration was opened by the decedent's collateral heirs, who inherit from him under Louisiana law to the exclusion of illegitimate children. Louisiana Civil Code Arti-

cles 206, 919 (1870).[1] The illegitimate child claiming her father's estate was formally acknowledged by him by notarial act during his lifetime.

The illegitimate child contends that she should inherit on the same basis as a legitimate child. She argues that the cited Louisiana inheritance statutes unconstitutionally violate equal protection and due process guarantees, since they deny an illegitimate child the right to inherit solely because of the illegitimacy. Levy v. Louisiana, 391 U.S. 68, 88 S. Ct. 1509 (1968); Glona v. American Guarantee and Liab. Ins. Co., 391 U.S. 73, 88 S. Ct. 1515 (1968).

Last year in *Levy* and *Glona* the United States Supreme Court held that the denial of wrongful death benefits merely because of illegitimacy constitutes an invidious discrimination which violates the due process and equal protection clauses of the United States Constitution. The Louisiana wrongful death statute (Civil Code Article 2315) was invalidated to the extent that it denied illegitimate children or their parents the right to recover on the same basis as the enactment permits where the birth is legitimate.

The appellant relies on reasoning similar to that followed by the Supreme Court of North Dakota in Estate of Jensen, —— N. Dak. ——, 162 N.W. 2d 861 (1968). There, the court invalidated a North Dakota statute which granted inheritance rights to legitimate children

---

[1] Article 919 provides: "Natural children are called to the inheritance of their natural father, who has duly acknowledged them, when he has left no descendants nor ascendants, nor collateral relations, nor surviving wife, and to the exclusion only of the State.

In all other cases, they can only bring an action against their natural father or his heirs for alimony, the amount of which shall be determined, as is directed in the title: *Of Father and Child.*"

Article 202, in defining "natural children", provides: "Illegitimate children who have been acknowledged by their father, are called natural children; those who have not been acknowledged by their father, or whose father and mother were incapable of contracting marriage at the time of conception, or whose father is unknown, are contradistinguished by the appellation of bastards."

Article 206 provides: "Illegitimate children, though duly acknowledged, can not claim the rights of legitimate children. The rights of natural children are regulated under the title: *Of Successions.*"

but denied them to illegitimates. In so holding, the court states, 162 N.W. 2d 878:

"Applying the reasoning in *Levy* as no action, conduct or demeanor of the illegitimate children in the instant case is relevant to their status of illegitimacy, we conclude that the classification for purposes of inheritance contained in [the North Dakota statute making the distinction between legitimate and illegitimate children], which is based on such a status and which results in illegitimate children being disinherited while their legitimate brothers and sisters inherit, is unreasonable.

"Accordingly, . . . , we have no hesitancy in holding that [such statute] is unconstitutional as an invidious discrimination against illegitimate children in violation of Section 1 of the Fourteenth Amendment of the United States Constitution and Section 20 of the North Dakota Constitution. This statute, which punishes innocent children for their parents' transgressions, has no place in our system of government, which has as one of its basic tenets equal protection for all."

See also R____ v. R____, —— Mo. ——, 431 S.W. 2d 152 (1968); Storm v. Nun, 291 N.Y.S. 2d 515 (Family Ct., 1968); Note, 43 Tul. L. Rev. 383, 391-92 (1969).

This reasoning is persuasive. Nevertheless, we do not accept the holdings of *Levy* and *Glona* as deciding more than that wrongful death enactments create an unreasonable exemption from tort liability by allowing illegitimacy to bar recovery of tort damages otherwise due. The decisions found only that there was no rational basis for assuming that marriage would be discouraged and illegitimacy encouraged by denying recovery for subsequent wrongful deaths.

On the other hand, these decisions did not modify certain basic concepts: A state has great latitude in making classifications, so that differences and distinctions in treatment offend the constitutional guarantees only when the variations are arbitrary and without rational basis. Morey v. Doud, 354 U.S. 457, 77 S. Ct. 1344 (1957); United States v. Burnison, 339 U.S. 87, 70 S. Ct. 503 (1950). Further, the regulation of descent and distribu-

tion are peculiarly within the powers reserved to the states. United States v. Burnison, 339 U.S. 87, 70 S. Ct. 503 (1950); Harris v. Zion Savings Bank & Trust Co., 317 U.S. 447, 63 S. Ct. 354 (1943).

Louisiana Civil Code Articles 206 and 919 do not violate constitutional guarantees solely because they constitute enactment in an area traditionally within the power of the states to regulate, nor solely because they represent a determination of succession (or of non-succession of illegitimates) of ancient origin in our own law and commonly found from ancient times in most other jurisdictions. See Louisiana Civil Code 1808, Book 3, Title 1, Chapter 3, Article 44;[2] 10 CJS "Bastards", Section 29.

They are constitutional, also, because, within the broad powers of classification by the state legislature, there is a reasonable basis for the denial of inheritance to illegitimates equal to that of legitimate children.

First. However unfair it may be to punish innocent children for the fault of their parents, nevertheless such denial may within the legislative discretion properly have a tendency to encourage marriage and to discourage illegitimacy, valid social aims of the state. Non-marriage and illegitimacy might not be deterred by the not-readily-foreseeable subsequent death by tort, or at least *Levy* and *Glona* so held in invalidating illegitimacy as a ground for denial of wrongful death benefits. But, since all men must die and leave their property behind for their suc-

---

[2] See reprint of de la Vergne Volume containing Moreau-Lislet's source notes, *Digest of the Civil Laws, Territory of New Orleans, 1808*, p. 155 overleaf, indicating the source to be in the traditional Spanish law in force before Louisiana became part of the United States, including the *Partidas* 6, tit. 13, loi 8, and the *Fuero Real*, Book 3, tit. 6, loi 8. The reprint was made available to the law libraries and appellate courts of Louisiana through republication by the Louisiana State University and Tulane University Schools of Law in 1968. See Franklin, An Important Document in the History of American Roman and Civil Law: The de la Vergne Manuscript, 33 Tul. L. Rev. 35 (1958). As the de la Vergne foreword and Franklin article translating it show, the *Fuero Real* and *Partidas* represent thirteenth century codifications of customary and Roman law then already ancient.

cessors, the denial of inheritance rights to illegitimates might reasonably be viewed as encouraging marriage and legitimation of children.[3]

Second. Such a regulation might reasonably serve the vital interest of a state in the stability of its land titles and in the prompt and definitive determination of the valid ownership of property left by decedents. It might aid to avoid the disruptions and uncertainties to result from unknown and not easily ascertained claims through averments of parentage, bona fide or otherwise, as to a decedent no longer present to disprove them.[4] See Strahan v. Strahan, 304 F. Supp. 40 (WD La., 1969).

We conclude that the trial court correctly denied the claim of the illegitimate child to inheritance rights.

As to an alternative claim, we likewise find no manifest error in the court's conclusion that the illegitimate child is not entitled to alimony from her father's estate under the provisions of Civil Code Articles 240-242, 243, 919. The court found that the child is not in need of such support (a codal prerequisite) because she is drawing $100 per month in social security and veterans administration benefits.

---

[3] Here, for instance, the child could have been legitimated by the marriage of her parents. Louisiana Civil Code Article 198. Those in similar circumstances might be induced to legalize their relationship and legitimize their children by the harsh result of the regulation presently upheld, or so it might reasonably be believed by legislature.

[4] In fairness to appellant, it should be observed that she counters this suggestion by noting that the state could probably reasonably restrict inheritance to illegitimates duly acknowledged by the decedent during his lifetime. Interestingly enough, the French follow a variation of this approach. See: Code Napoleon Article 757; Planiol, *Civil Law Treatise*, Volume 3, Sections 1821-28 (LSLI translation, 1959).

For the reasons assigned, therefore, we affirm the judgment of the trial court dismissing the claims of the child, at the cost of the appellant.

AFFIRMED.

A TRUE COPY
Lake Charles, La., Dec. 18, 1969

/s/ Marie S. Hawkins
Clerk Court of Appeal,
Third Circuit

SUPREME COURT OF LOUISIANA
NEW ORLEANS, 70112

No. 50,369 February 27, 1970

SUCCESSION OF EZRA VINCENT

In re: Lou Bertha Lebine, Natural Tutrix of Rita Nell Vincent, Minor applying for certiorari, or writ of review to the Court of Appeal, Third Circuit, Parish of Calcasieu.

Writ refused. The judgment of the Court of Appeal is correct.

/s/ MEB
/s/ JBF
/s/ SSL
/s/ EHMcC
/s/ WBH
/s/ JWS
/s/ FWS

A TRUE COPY
Clerk's Office
Supreme Court of Louisiana
New Orleans
February 27, 1970

/s/ S. WALLACE MILLER
Deputy Clerk

SUPREME COURT OF THE UNITED STATES

No. 5257, October Term, 1970

LOU BERTHA LABINE, NATURAL TUTRIX OF MINOR CHILD, RITA NELL VINCENT, APPELLANT

v.

SIMON VINCENT, ADMINISTRATOR OF THE SUCCESSION OF EZRA VINCENT

ON CONSIDERATION of the motion for leave to proceed in forma pauperis herein,

IT IS ORDERED by this Court that the said motion be, and the same is hereby, granted.

October 12, 1970

SUPREME COURT OF THE UNITED STATES

No. 5257, October Term, 1970

LOU BERTHA LABINE, NATURAL TUTRIX OF MINOR CHILD, RITA NELL VINCENT, APPELLANT

v.

SIMON VINCENT, ADMINISTRATOR OF THE SUCCESSION OF EZRA VINCENT

APPEAL from the Supreme Court of the State of Louisiana

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

October 12, 1970

☆ U. S. GOVERNMENT PRINTING OFFICE: 1970 408834 312

Statem

Sup

FILE COPY

Statement not printed

IN THE

Supreme Court of the United States

October Term, 1969
70

No. ~~[illegible]~~ 5257

LOU BERTHA LABINE, Natural Tutrix of
the minor child, Rita Nell Vincent,
Appellant,

versus

Administrator of Succession of Ezra Vincent,
Respondent.

MOTION TO DISMISS APPEAL FROM
SUPREME COURT OF STATE OF LOUISIANA

BRIEF FOR THE RESPONDENT

JAMES A. LEITHEAD
NORMAN F. ANDERSON
Counsel for Respondent
117 West Broad Street
(Post Office Box 1299)
Lake Charles, Louisiana 70601

Subject Index

II

CITATIONS

Cases: Page

CITATIONS (Continued)

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1969

No. 2223 Misc.

LOU BERTHA LABINE, Natural Tutrix of the minor child, Rita Nell Vincent,

Appellant,

versus

Administrator of Succession of Ezra Vincent,

Respondent.

On Appeal from the Supreme Court of the State of Louisiana

BRIEF FOR RESPONDENT

MOTION TO DISMISS APPEAL

Respondent moves the Court to dismiss the appeal herein on the ground that no substantial Federal question is presented by the appeal.

OPINIONS BELOW

The opinion of the Court of Appeal, Third Circuit, State of Louisiana, is reported at 229 So. 2d 449 (1970), and the denial of the application to the Louisiana Supreme Court for a writ of certiorari is reported at 231 So. 2d 395 (1970).

JURISDICTION

The judgment of the Court of Appeal, Third Circuit, State of Louisiana, was entered on December 18, 1969, and a petition for rehearing was denied on January 7, 1970. The petition for a writ of certiorari was denied by the Supreme Court of the State of Louisiana on February 27, 1970. The jurisdiction of this Court rests on 28 USC 1257 (2).

STATEMENT

The decedent died intestate, and he was survived by no spouse, no ascendants nor legitimate descendants. An administration was opened by the decedant's collateral heirs, who inherited from him under Louisiana law to the exclusion of illegitimate children. A claim was made by an illegitimate child that she should inherit on the same basis as a legitimate child to the exclusion of the collateral heirs. In the alternative, she asked for alimony for her support, which was denied since she was receiving $100.00 per month from the Veteran Administration and Social Security Administration pensions, and was not in need, which was a prerequisite under the State Statute.

The State trial Court held that under Louisiana law, an acknowledged illegitimate child could not inherit from her father to the exclusion of collateral heirs, which decision was affirmed by the Court of Appeal, Third Circuit, State of Louisiana, and a writ of certiorari was denied by the Louisiana Supreme Court.

Appellant contends that the Articles of the Louisiana Civil Code dealing with descent and distribution which permits inheritance rights to illegitimate children only in certain cases is in violation of the equal protection and due process clauses of the 14th Amendment to the United States Constitution.

QUESTIONS PRESENTED

I. The regulation of descent and distribution of real and personal property is governed by State law and no Federal question is presented.

II. The distinction between legitimate and illegitimate children in the Louisiana Succession Laws do not violate the due process and equal protection clauses of the 14th Amendment to the United States Constitution.

III. The holdings of *Levy* and *Glona* should not apply to Louisiana Succession Laws.

IV. Louisiana has a paramount interest in the stability of its land titles.

V. No Federal question is presented upon a determination by State Court that a minor child receiving $100.00 per month is not in need under State Statute.

ARGUMENT

I.

The regulation of descent and distribution of real and personal property is governed by State law and no Federal question is presented.

The estate of the decedent consisted of movable property and immovable property all located in Calcasieu Parish, Louisiana, where he had established his domicile for many years prior to his death. The power of regulating the descent and distribution of property, both real and personal, is derived from and regulated by the State in which the property is located. *Frederickson vs. Louisiana*, 23 How 445, 16 L. Ed. 577 (1860); *United States vs. Fox*, 94 U.S. 315, 24 L. Ed. 192 (1876); *United States vs. Burnison*, 339 U.S. 87; 94 L. Ed. 675 (1950). The States were given this right under the 10th Amendment to the Constitution of the United States. The title and modes of disposition of real property within the State, whether intervivos or testamentary, are not matters placed under the control of Federal authority. *United States vs. Fox*, supra, *Harris vs. Zion Savings Bank & Trust Co.*, 317 U.S. 447, 63 S. Ct. 354, 87 L. Ed. 290 (1943). The right to inherit property is a statutory right governed by the laws where the property is situated. 26 A CJS Descent and Distribution, Paragraph 6, Page 526.

The Louisiana law provides that illegitimate acknowledged children may inherit from their natural father as follows:

Article 919, La. Revised Civil Code. Natural children are called to the inheritance of their natural father who has duly acknowledged them, when he has left no descendants nor ascendants, nor collateral relations, nor surviving wife, and to the exclusion only of the State.

In all other cases, they can only bring an action against their natural father or his heirs for alimony, the amount of which shall be determined as is directed in the title: *Of Father and Child.*

Article 202, La. Revised Civil Code. Illegitimate children who have been acknowledged by their father, are called natural children; those who have not been acknowledged by their father, or whose father and mother were incapable of contracting marriage at the time of conception, or whose father is unknown, or contra-distinguished by the appellation of bastards.

Article 206, Louisiana Civil Code. Illegitimate children, though duly acknowledged, cannot claim the rights of legitimate children. The rights of natural children are regulated under the title: *Of Successions.*

Since the decedent was survived by collateral relations, under the Louisiana Statutes of Descent and Distribution, the collateral relations inherit from him to

the exclusion of Appeliant, who was a natural child. *Louisiana Civil Code Article 919, supra.*

II.

The distinction between legitimate and illegitimate children in the Louisiana Succession Laws do not violate the due process and equal protection clauses of the 14th Amendment to the United States Constitution.

The fact that the Succession laws of the State of Louisiana make a distinction between the rights of inheritance of legitimate and illegitimate children does not violate the due process equal protection clauses of the 14th Amendment to the United States Constitution. The equal protection clause of the 14th Amendment permits the State to classify, the only requirement being that the classification is based upon some reasonable basis. To hold that the inheritance Statutes of the State of Louisiana are unconstitutional, the Court must find invidious, purposeful and arbitrary discrimination, wholly lacking in rationality.[1] *Morey vs. Doud* 354 U.S.

---

[1]As stated in *Morey vs. Doud*, supra, the rules for testing a discrimination have been summarized as follows:

"1. The equal protection clause of the Fourteenth Amendment does not take from the State the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary.

2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality.

457, 463, 464, 1 L. Ed. 2d 1485, 77 Sup. Ct. 1344, 1349. (1957); *United States vs. Burnison, supra.*

The distinction between legitimate and illegitimate children in the succession laws of the State of Louisiana do not violate the constitutional guarantees for the State of Louisiana has a paramount interest in encouraging and upholding the institution of marriage and discouraging the birth of illegitimate children. The preference given by Louisiana Statute to legitimate relations to inherit to the exclusion of illegitimate relations clearly is related to the legislative purpose.

The fact that Louisiana uses its succession laws to encourage and discourage illegitimacy, which is a valid social aim of the State, and is related to the right of a State to enact legislation to protect the health, morals and general welfare of its citizens, and this is clearly within its constitutional province. *Strahan vs. Strahan*, 304 F. Supp. 40. (WD La. 1969)

---

3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed.

4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary. *"Lindsley vs. Natural Carbonic Gas Co.* 220 US 61, 78, 79, 55 L ed 369, 377, 31 S Ct 337, Ann Cas 1912C 160."

III.

The holdings in Levy and Glona should not apply to the Louisiana Succession Laws.

The decisions in *Levy* and *Glona*[2] stand for the proposition that the denial of wrongful death benefits merely because of illegitimacy violates the due process and equal protection clauses of the United States Constitution because it constitutes in invidious discrimination. The Louisiana wrongful death Statute was invalidated to the extent that it denied illegitimate children or their parents the right to recover on the same basis as the enactment permits where the birth is legitimate. The holdings of *Levy* and *Glona* decide no more than wrongful death enactment create an unreasonable exemption from tort liability by allowing illegitimacy to bar recover of tort damages otherwise due. The decisions found only that there was no rational basis for assuming that marriage would be discouraged and illegitimacy encouraged by denying recovery for subsequent wrongful death. *Strahan vs. Strahan*, supra.

The State has the right to make classifications in its legislation, and the regulation of descent and distribution are powers reserved to the State, and the inheritance laws of the State of Louisiana are constitutional because they are within the broad powers of classification permitted by State Legislatures, and there is a

---

[2]*Levy vs. State of Louisiana*, 391 U.S. 68, 88 S Ct 1509 20 L ed 2d 436 (1968); *Glona vs. American Guarantee & Liability Insurance Company*, 391 US 73, 88 S Ct 1515, 20 L ed 2d 441 (1968).

reasonable basis for the denial of inheritance to illegitimates equal to that of legitimate children.

IV.

Louisiana has a paramount interest in the stability of its land titles.

The transmission of a decedent's property is based upon ancient legal principles and for centuries have been the basis for the establishment of clear definitive disposition of estates. *33 Tulane Law Rev. 43 (1958)*, and authorities cited therein; *Strahan vs. Strahan*, supra. To hold that many years after a person's death, an illegitimate child who may have been unknown at the time, could many years later assert an interest in adjudicated property would devastate the orderly transmission of estates. In *Strahan vs. Strahan*, supra, the Court quoted with approval as follows:

> "It (the State) has control over property within its limits; and the condition of ownership of real estate therein, whether the owner be stranger or citizen, is subject to its rules concerning the holding, the transfer, liability to obligations, private or public, and the modes of establishing titles thereto. * * * The well-being of every community requires that the title to real estate therein shall be secure, and that there be convenient and certain methods of determining any unsettled questions respecting it. The duty of accomplishing this is local in its nature; it is not a matter of national con-

cern or vested in the general government; it remains with the State; and as this duty is one of the State, the manner of discharging it must be determined by the State, and no proceeding which it provides can be declared invalid, unless it conflicts with some special inhibitions of the Constitution, or against natural justice.'

"* * * Undisclosed and unknown claimants are, to say the least, as dangerous to the stability of titles as other classes. This principle received recognition and was applied in *Hamilton vs. Brown*, 161 US 256, 16 S Ct 585, 40 L Ed 691, where it was held to be competent for a State to make provision for promptly ascertaining, by appropriate judicial proceedings, who has succeeded to property upon the death of a person leaving such property within the State. * * *.

* * * *

"* * * The power of the State as to titles should not be limited to settling them as against persons named. In order to exercise this power to its fullest extent, it is necessary that it should be made to operate on all interests, known and unknown * * *"
American Land Company vs. Zeiss, 219 US 47, 60; 31 S Ct 200, 204, 55 L ed 2d 82 (1910)

The title and modes of disposition of real property are governed by State law, and this is as it should be since concepts of real estate and land titles are deeply

rooted in the traditions, customs, habits and laws of the State. *United States vs. Fox*, supra, *United States vs. Burnison*, supra; *Richardson vs. McDonald*, 139 La 651, 71 So 934 (1916); *Reconstruction Finance Corporation vs. Beaver County*, 328 US 204, 66 S Ct 992; 90 L ed 1172 (1946).

V.

No Federal question is presented upon a determination by State Court that a minor child receiving $100.00 per month is not in need under State Statute.

The laws of Louisiana provide that an illegitimate child is entitled to alimony from her father's estate.[4] The child made an alternative claim for support, but in view of the fact that the Court found that she was receiving the sum of $100.00 per month in Social Security and Veteran's Administration benefits, the Court found that she was not in need of such support which is a prerequisite statutory requirement.

CONCLUSION

The appeal from the Louisiana Supreme Court should be dismissed for the reason that there is no substantial Federal question presented, and for the other reasons set forth herein.

---

[4]*Article 242, Louisiana Civil Code.* But in order that they (illegitimate children) may have a right to sue for this alimony, they must:

1. * * * 2. They must prove in a satisfactory manner that they stand absolutely in need of such alimony for their support.

Respectfully submitted,

JAMES A. LEITHEAD
NORMAN F. ANDERSON
Counsel for Respondent
117 West Broad Street
(Post Office Box 1299)
Lake Charles, Louisiana 70601

CERTIFICATE

I, Norman F. Anderson, member of the Bar of the Supreme Court of the United States, do hereby certify that a copy of the foregoing Motion to Dismiss Appeal has been deposited this day in the United States mail, postage prepaid, addressed to Lou Bertha LaBine, Natural Tutrix of the minor child, Rita Nell Vincent, c/o Cox & Cox, Attorneys at Law, 702 Kirby Street, Lake Charles, Louisiana 70601.

Lake Charles, Louisiana, June _____, 1970.

NORMAN F. ANDERSON

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 5257

LOU BERTHA LABINE, NATURAL TUTRIX OF MINOR CHILD, RITA NELL VINCENT,

Appellant,

v.

SIMON VINCENT, ADMINISTRATOR OF THE SUCCESSION OF EZRA VINCENT,

Appellee.

APPEAL FROM THE SUPREME COURT OF LOUISIANA

BRIEF ON BEHALF OF APPELLANT

JAMES J. COX

702 Kirby Street
Lake Charles, Louisiana 70601

Attorney for Appellant

Washington, D. C. THIEL PRESS 202 393-0625

TABLE OF CONTENTS

AUTHORITIES CITED

CASES:

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 5257

LOU BERTHA LABINE, NATURAL TUTRIX OF MINOR CHILD, RITA NELL VINCENT,

Appellant,

v.

SIMON VINCENT, ADMINISTRATOR OF THE SUCCESSION OF EZRA VINCENT,

Appellee.

APPEAL FROM THE SUPREME COURT OF LOUISIANA

BRIEF ON BEHALF OF APPELLANT

OPINIONS BELOW

The opinion of the Court of Appeal, Third Circuit, State of Louisiana, is reported at 229 So. 2d 449 (1970), and the denial of the application to the Louisiana Supreme Court for a writ of certiorari is reported at 231 So. 2d 395 (1970).

JURISDICTION

The judgment of the Court of Appeal, Third Circuit, State of Louisiana, was entered on December 18, 1969, and a petition for rehearing was denied on January 7, 1970. The petition for a writ of certiorari was denied by the Supreme Court of the State of Louisiana on February 27, 1970. Notice of appeal was filed on May 13, 1970. The Supreme Court of the United States has jurisdiction to review by direct appeal the decree complained of by the provisions of 28 USC, Section 1257(2).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The constitutional provisions that are involved consist of Amendment XIV, Sec. 1 to the United States Constitution, as follows:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Louisiana statutes that are involved are the following articles of the Louisiana Civil Code of 1870:

Articles 178, 202, 206, 886-892, 902, 911-914 and 919

These articles of the Louisiana Civil Code are set forth in full in Appendix A. Specifically, these articles establish different classes of children and deny inheritance rights to illegitimate children except in certain narrow circumstances where there are no other claimants whatsoever to decedent's estate.

QUESTIONS PRESENTED

Articles 178, 202, 206, 886-892, 902, 911-914 and 919 of the Louisiana Civil Code of 1870 establish different classes of children and except in very narrow cases and only where there are no other claimants to a decedent's estate, an illegitimate child is denied inheritance simply because of his illegitimacy. The principal questions presented are:

A. Can an illegitimate child, duly acknowledged by her father, be completely denied any inheritance merely because of her status as an illegitimate in contravention of the due process and equal protection clauses established under the Fourteenth Amendment to the United States Constitution?

B. Are Articles 178, 202, 206, 886-892, 902, 911-914 and 919 of the Louisiana Civil Code unconstitutional and violative of the Fourteenth Amendment to the United States Constitution by virtue of their establishment of different classes of children and denial of inheritance rights to illegitimate children?

C. Do the holdings of the United States Supreme Court in the cases of *Levy v. Louisiana*, 88 S. Ct. 1590, 391 U.S. 68, 20 L. Ed. 2d 436 (1968) and *Glona v. American Guaranty & Liability Insurance Company*, 88 S. Ct. 1515, 391 U.S. 73, 20 L. Ed. 2d 444 (1968) apply equally to illegitimate children claiming property and inheritance rights as well as to illegitimate children and parents claiming property rights by virtue of wrongful death actions?

STATEMENT OF THE CASE

This case involves a destitute Negro child, Rita Nell Vincent, who was born out of wedlock. The child was acknowledged by notarial act by Ezra Vincent, her father, to be his child and he left a substantial estate. Under Louisiana law, if the child had been legitimate, she would have inherited Ezra Vincent's entire estate since she was his only child. However, the child's claim to the estate through her tutrix was dismissed by the trial court. The decedent, Ezra Vincent, was not married at the time of his death and left no ascendants but left collateral relations who laid claim to his

estate claiming to be his legitimate collateral relations. He left no legitimate descendants. An administration was opened by decedent's collateral heirs. The decedent, Ezra Vincent, died intestate.

On the trial of the cause, it was developed by plaintiff's exhibits that the child, Rita Nell Vincent, was definitely the child of the decedent, Ezra Vincent. The child's birth certificate (Exhibit P-2; A. 7) which was duly received in evidence (R. 61) establishes that the child, Rita Nell Vincent, was the daughter of Ezra Vincent and Lou Bertha Patterson (now Labine). Conclusive evidence of the paternity of the child, Rita Nell Vincent, by decedent, Ezra Vincent, is contained in Exhibit P-3 (A. 8) which was duly received in evidence (R. 61), being the acknowledgement of paternity by notarial act duly executed by both Ezra Vincent and Lou Bertha Patterson (now Labine) and filed for record in the Division of Public Health Statistics of the Louisiana State Board of Health in accordance with law.

On the other hand, the collateral heirs who lay claim to decedent's estate had great difficulty in proving their own relationship to the decedent. For example, none of the witnesses, other than the immediate family, were able to recite the names of all of the brothers and sisters of Ezra Vincent. See, e.g. testimony of Muriel Rigmaiden called as a witness by the defendant (A. 22, 23), testimony of Lenon Braxton called as a witness by the defendant (A. 24, 25, 26), Edgar Mouton called as a witness by the defendant (A. 27, 28, 29). In fact, even the surviving brothers and sisters of decedent were unable to establish by their own testimony or any supporting documents that their mother and father were actually married or that they were the legitimate collateral relations of the decedent, Ezra Vincent. See testimony of Wilbur Vincent called as a witness by the defendant (A. 18-21), cross-examination of Ralph Vincent called as a witness by defendant (A. 30, R. 130-131). This testimony reveals a great deal of confusion concerning the circumstances, if any, of the marriage of the mother and father of the decedent and the decedent's brothers and sisters. Nevertheless, the lower court ruled

that the collateral relations inherited the decedent's entire estate, apparently basing this ruling on a finding that the collateral heirs proved their legitimate relationship by reputation. Nevertheless, this proof was sketchy, to say the least. In fact, the best documented relationship between the decedent and any other claimant was the well documented paternity by the decedent of the illegitimate child, Rita Nell Vincent, who was denied any recovery whatsoever in the case.

Not only did the Louisiana courts refuse any inheritance rights to the illegitimate child but even refused alimony from the estate for her support under that provision of the Louisiana Civil Code which provides that an estate of the deceased father of an illegitimate child must contribute reasonable alimony for the child's support. Articles 240 and 241 of the Louisiana Civil Code. Louisiana courts based their holding on the grounds that the United States government was amply supporting the child with Sixty and 00/100 ($60.00) Dollars per month social security payments and Forty and 00/100 ($40.00) Dollars per month Veterans' Administration payments. This holding was in spite of the fact that the evidence adduced in the court below showed that the child required at least One hundred ninety-two and 30/100 ($192.30) Dollars per month to survive. (A. 13-15)

The upshot of petitioner's case in the state courts was that the little child, Rita Nell Vincent, should be granted the same rights as any other child since it was not her fault that she was born an illegitimate. Since the Louisiana Codal Articles involved at least granted the child the right to claim alimony for her support as an illegitimate, she asked for this as an alternative plea, but the state courts ruled that the total payments by the United States government of One hundred and 00/100 ($100.00) Dollars for her support precluded her right to even claim bare subsistence from her father's estate. A review of the record will reveal that the fact that the denial of equal protection and due process to this child by the Louisiana inher-

itance statutes was violative of the Fourteenth Amendment to the United States Constitution was raised in the trial court, the Third Circuit Court of Appeal and the Louisiana Supreme Court, but all ruled in favor of their validity.

ARGUMENT

I.

DOES THE DENIAL OF INHERITANCE TO THIS ILLEGITIMATE CHILD VIOLATE THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION?

The United States Supreme Court has ruled that the discrimination against illegitimates as practiced in Louisiana under our wrongful death statute (Article 2315 of the Louisiana Civil Code of 1870) constituted a denial of equal protection and due process under the Fourteenth Amendment to the United States Constitution. See *Levy v. Louisiana*, supra and *Glona v. American Guaranty & Liability Insurance Company*, supra. This court in *Levy* and *Glona* recognized that legitimates and illegitimates are indistinguishable with respect to such factors as biological origin, citizenship responsibility and the intimate familial relationship between a parent and his child.

The following cases have held that an illegitimate parent must contribute to his child's support even in the absence of a statute requiring such support, on the rationale that a discrimination between legitimate and illegitimate children is unconstitutional. See *R- v. R-*, 431 S.W. 2d 152 (S.Ct. of Missouri 1968); *Storm v. None*, 291 N.Y.S. 2d 515 (1968). As was observed by the court in *Haley v. Metropolitan Life Insurance Company*, 434 S.W. 2d 7 at Page 13, quoting from earlier cases:

> "Society is becoming progressively more aware that children deserve proper care, comfort, and protection even if they are illegitimate. The burden of illegitimacy in purely social relationships should be enough, without society adding unnecessarily to the

> burden with legal implications having to do with the care, health, and welfare of children . . .
>
> "Modern society shrinks from application of the Old Testament (Exodus 20) commandment 'visiting the iniquity of the fathers upon the children'. Rather we accept that more humanitarian view stated by Judge Leon Yankwich, that 'there are no illegitimate children, only illegitimate parents.'"

To the obvious counter argument that the granting of inheritance rights to an illegitimate child would wreak havoc and create chaos in land titles, suffice it to say that the case before this court is a classic repudiation of that canard. In this case, collateral relations who came from as far away as Washington, D.C. to lay claim to decedent's estate in Louisiana were unable to show a single shred of documentary evidence of their relationship to decedent. None of them could produce any birth certificates nor, in fact, could anyone produce decedent's birth certificate. There was no proof of a marriage of decedent's mother and father nor was there any proof except reputation proof of the fact that decedent's collateral relations were, in fact, what they claimed to be. The reputation proved extremely sketchy since none of the reputation witnesses could recite the names of all of decedent's brothers and sisters, yet the lower court held that decedent's brothers and sisters had proven their relationship and that the illegitimate child who had documentary proof of her relationship could inherit nothing because of her status.

Certainly there is no more rational basis for discriminating against a child because of illegitimacy (a factor of birth over which he has no control) than because of race. The fact is that discrimination against illegitimates rests on their lack of political strength. One out of every sixteen (16) persons in the United States is an illegitimate. Krause, *Bringing the Bastard into the Great Society - A Proposed Uniform Act on Illegitimacy*, 44 Tex. L.Rev. 829 (1969). However, contrary to popular opinion, bastards are noto-

riously under-represented in our legislatures and in our Congress. The burden of protecting them from arbitrary discrimination falls almost exclusively upon the courts.

The first principle of equal protection demands that the court open its eyes to clear evidence which proves that government has moved against a particular group with an "evil eye" or reckless disregard of their welfare. *Yick Wo. v. Hopkins*, 118 U.S. 356 (1886). The Constitution "nullifies sophisticated as well as simple minded modes of discrimination", *Lane v. Wilson*, 307 U.S. 268, 275 (1939) and our courts will not hesitate to cast aside even the most time honored formula espousing the ideal of equality once it is discovered the formula, in fact, fosters and perpetuates inequality. *Brown v. Board of Education*, 374 U.S. 483 (1954).

Basically, the only rational argument that can be made against allowing illegitimates to inherit centers around the question of proof, but the question of proof cannot be used as a shibboleth behind which an unconstitutional discrimination can hide. Rather, clear and convincing modes of proof may reasonably be required without discriminating against any particular class. A satisfactory, rational standard of proof of paternity must be set in the very state interest which Justice Harlan invokes in his dissenting opinion in the *Levy* and *Glona* cases, *supra.*—the interest "to simplify a particular proceeding by reliance on formal papers rather than a contest of proof." If such an interest had been present in our case rather than a discriminatory interest, the child, Rita Nell Vincent, would certainly have prevailed since she clearly established her relationship to the decedent while the discriminatorily favored collaterals struggled through to establish relationship through sketchy reputation evidence.

II.

ARE THE LOUISIANA CODAL ARTICLES INVOLVED VIOLATIVE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION?

The Louisiana Codal Articles involved are Articles 178, 202, 206, 886-892, 902, 911-914 and 919 of the Louisiana Civil Code of 1870. They establish different classes of children and deny inheritance right to illegitimate children except where the only claimant to the decedent's succession is the state, thereby placing the illegitimate in the lowest possible class or category of human beings. These articles are set out in full in Appendix A annexed hereto. The basic constitutional guide lines to be followed in investigating state statutes on equal protection grounds were summarized in *Morey v. Doud*, 354 U.S. 457, 463-64 (1957):

> 1. The equal protection clause of the Fourteenth Amendment does not take from the state the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary.
>
> 2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality.
>
> 3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed.
>
> 4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary. *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 78-79. To these rules we add the caution that "Discriminations of an unusual character especially suggest careful consideration to determine whether they are obnoxious to the Constitutional provision."

It is true that in Louisiana's legal system, property rights are closely tied to legitimate family relationships. However, it is recognized today sociologically that the denial of rights of an illegitimate child because of his status is an ineffective means to promote legitimate marriages and discourage promiscuity. See generally, H. Krause, *Equal Protection for the Illegitimate*, 65 Mich. L. Rev. 477, 492-95 (1967).

The argument that denying illegitimate children the right to recover is based on legitimate state interest in discouraging the bringing of children into the world out of wedlock must fall in light of the reasoning of this honorable court in the cases of *Levy* and *Glona*. No rational legislative purpose supports such discrimination. Admittedly, encouraging marriage is a valid legislative purpose, but the fault in that argument lies in the constitutional requirement that a fair connection exist between a statute and a valid purpose, between the status of the illegitimate under the law and his parents' conduct. As was stated by Harry D. Krause in his excellent article, *Legitimate and Illegitimate Offspring of Levy v. Louisiana - First Decision on Equal Protection and Paternity*, 36 University of Chicago Law Review, 338 at page 347:

> "If there is any connection (between the status of the illegitimate child under the law and his parents' conduct), it lies in the expectation that a potential mother will be so concerned about the treatment that awaits her illegitimate child at the hands of the law that she will adjust her conduct accordingly. The rising illegitimate birth rate tends to show that it is not likely that many potential illegitimate mothers are guided by this. But even if there were an effective relationship, it would not be permissible to punish an innocent nonparty for someone else's undesirable conduct."

The state of North Dakota has recognized the fact that its statute denying inheritance to illegitimates is clearly a denial of equal protection of the law. See *In re Estate of*

Jensen, 162 N.W. 2d 861 (S.Ct. of N.D. 1968). The court held at page 878 of that opinion:

> "Accordingly, . . ., we have no hesitancy in holding that (such statute) is unconstitutional as invidious discrimination against illegitimate children in violation of Section 1 of the Fourteenth Amendment of the United States Constitution and Section 20 of the North Dakota Constitution. This stature, which punishes innocent children for their parents' transgressions, has no place in our system of government, which has as one of its basic tenets, equal protection for all."

It should be pointed out that every United States jurisdiction (including the District of Columbia) except Louisiana allows an illegitimate child to inherit from his mother as though legitimate. Note, *The Court Acknowledges the Illegitimate*, 118 U. of Pa., L. Rev. 1, 24. Nineteen jurisdictions allow inheritance from the father's estate providing certain statutory requirements have been met. See Note, *Illegitimacy*, Brooklyn L. Rev. 45, 74-84 (1959). This places the main stream of American thought out of line with the early common law, in which, in Blackstone's words, "the incapacity of a bastard consists principally in this, that he cannot be heir to anyone, neither can be have heirs, but of his own body; for, being nullius fillius, he is therefore of kin to nobody, and has no ancestor from whom any inheritable blood can be derived." *I Blackstone, Commentaries on the Laws of England*, 481 (Kerr, London 1857). That common law rule or conclusive presumption is without foundation in fact. This distinction between legitimate and illegitimate children arose under the common law from the necessity in feudal times to assure land tenure, which was the basis of power and social stability. Since the creation of the rule, the conditions in society which required it have disappeared and the rule simply continues now as a source of great hardship and inequity.

Nonetheless, before this honorable Court strikes down the discrimination against illegitimates with respect to inherit-

ance rights, it is necessary to investigate once again whether the basis for the discrimination–the desire of the state to promote and protect the legal family unit and the certainty of property rights derived therefrom–is rational. The following observation from a Note, 43 Tulane L. Rev. 383 at page 392, is relevant:

> "It is acknowledged that there is a strong argument with respect to Louisiana law that the inferior status of illegitimates should be maintained since under the civil law, property rights are closely tied to legitimate family relationships. However, in the final analysis, it is submitted that there is no more rational basis for discriminating against the illegitimate under the law of successions than there was under the wrongful death and survival action situation in *Levy* and *Glona*. But even in the event that illegitimates are granted the substantive right of inheritance from their blood relatives, they will still have the procedural burden of proving the requisite family relationship."

It must once again be asked whether punishing innocent illegitimate children in their inheritance rights truly promotes the stability of legitimate family relationships. Statistics indicate otherwise. According to Campbell and Cowlig, *The Incidence of Illegitimacy in the United States*, 5 Welfare in Review 1, 4 (No. 5 May 1967), the number of illegitimate births per 1,000 in the year 1940 in the United States was 37.9. In the year 1965, it had risen to 77.4. Evidently, the creativity of the illegitimate parents was in no way hampered by the law's traditional denial of legal equality to their illegitimate children. In other words, life in all of its fullness has gone on in spite of the law's restrictions. Perhaps the parents should pay for the privilege of having illegitimate children, but to require the innocent children to pay for their illegitimacy is a denial of due process and equal protection and a clear reflection of a historical prejudice against illegitimates. Perhaps, too, the products of legitimate relationships are jealous of their unconstitution-

ally granted superiority in property rights and will not let the barriers down without the intervention of justice through the courts.

III.

DO THE LEVY AND GLONA HOLDINGS, SUPRA., APPLY TO PROPERTY RIGHTS AS WELL AS WRONGFUL DEATH ACTIONS?

The Louisiana courts in this case have erroneously held that the holdings of *Levy* and *Glona, supra,* were limited to interpretation of the wrongful death enactments in this state. There is no more a rational basis for assuming that marriage would be encouraged and illegitimacy discouraged by denying recovery for subsequent wrongful death than there is for assuming that marriage would be encouraged and illegitimacy discouraged by denying inheritance rights to illegitimate children. This is especially true in a case like the instant one in which the father of the illegitimate child went to the trouble of duly acknowledging the fact that the child was his own. In fact, the Court of Appeals, Third Circuit, State of Louisiana, which decided adversely to the little girl, Rita Nell Vincent's, rights in the instant case has subsequently granted inheritance rights to a duly acknowledged illegitimate child where the deceases parent's acknowledgment of paternity also included a statement of intent to legitimate the child. See *Succession of Saul Miller,* 230 So. 2d 417, (La. App. 1970).

It strains credulity to argue that the use of words of intention to legitimate a child would magically make this child superior to or different from a child whose parent subscribed a document acknowledging the truth and fact of his paternity of such a child. In this most recent Louisiana case, we have the strange situation of legitimacy being so sanctified that a mere declaration to that effect satisfies the law's desire to elevate such a child over one not so sanctified. There we see an important elevation of procedure into substance, of discrimination into concrete deprivation. In our case, the father, Ezra Vincent, bequeathed upon his

child, Rita Nell Vincent, procedural proof of his parentage, supported the child during his lifetime, and lived in the same family unit with her (A. 12-18) but failed to sanctify the child with the sacred words of legitimacy which the prejudice of our laws demand. There is no substantive difference between Rita Nell Vincent and the child involved in the *Succession of Saul Miller, supra.* Equal protection should be granted to the little girl in this case no matter what effect it might have on the succession laws of this and other states which deny equal protection and due process of law to such children.

Finally, if it be argued that the state has a right to differentiate between legitimates and illegitimates on the basis of the *presumed intent* of an intestate, it is clear that such discrimination constitutes unwarranted *state action* to deny equal protection and due process, although an individual might be allowed to so discriminate.

CONCLUSION

It is respectfully submitted that this honorable court should reverse the holdings of the Louisians courts in this case and should enter a decree declaring that Rita Nell Vincent is the lawful descendant of Ezra Vincent and as such, entitled to inherit his estate in the same manner as any other lawful descendant under the laws of Louisiana.

Respectfully submitted,

James J. Cox
702 Kirby Street
Lake Charles, Louisiana 70601

Attorney for Appellant.

APPENDIX A

Articles, Louisiana Civil Code of 1870

Article 178: Children are either legitimate, illegitimate, or legitimated.

Article 202: Illegitimate children who have been acknowledged by their father, are called natural children; those have not been acknowledged by their father, or whose father and mother were incapable of contracting marriage at the time of conception, or whose father is unknown, are contradistinguished by the appellant of bastards.

Article 206: Illegitimate children, though duly acknowleged, can not claim the rights of legitimate children. The rights of natural children are regulated under the title: *Of Successions.*

Article 886-892: 886: If there is no testament or institution is null or without effect, the succession is then open in favor of the legitimate heirs. by the mere operation of the law.

887: There are three classes of legal heirs, to wit: The children and other lawful descendants; The fathers and mothers and other lawful ascendants; and the collateral kindred.

888: The nearest relation in the descending, ascending or collateral line, conformable to the rules hereafter established, is called to the legal succession.

889: The propinquity of consanguinity is established by the number of generations, and each generation is called a degree.

890: The series of degrees forms the line; the series of degrees between persons who descend from one another is called direct or

lineal consanguinity, and the series of degrees between persons who do not descend from one another, but spring from a common ancestor, is called the collateral line or collateral consanguinity.

The direct line is divided into a direct line descending and a direct line ascending: The first is that which connects the ancestor with those who descend from him; the second is that which connects a person with those whom he descends.

891: In the direct line there are as many degrees as there are generations. Thus the son is with regard to the father, in the first degree, the grandson in the second, and vice versa with regard to the father and grandfather towards the sons and grandsons.

892: In the collateral line the degrees are counted by the generations from one of the relations up to the common ancestor exclusively, and from common ancestor to the other relations.

Thus brothers are related in the second degree; uncle and nephew in the third, degree; cousins german in the fourth, and so on.

Article 902: Legitimate children or their descendants inherit from their father and mother, grandfathers or other ascendants, without distinction of sex or primogeniture, and though they may be born from different marriages.

They inherit in equal portions and by heads, when they are in the same degree, and inherit by their own right; they inherit by roots, when all or part of them inherit by representation.

Article 911-914:

911: If a person dies, leaving no descendants, and his father and mother survive, his brothers and sisters, or their descendants, only inherit half of his succession.

If the father or the mother only survice the brothers and sisters, or their descendants, inherit three-fourths of his succession.

912: If a person dies, leaving no descendants nor father nor mother, his brothers and sisters, or their descendants, inherit the whole succession to the exclusion of the ascendants and other collarerals.

913: The partition of the half, the three-fourths or the whole of a succession falling to brothers and sisters, as mentioned to two preceding articles, is made in equal protions, if they are all of the same marriage; if they are of different marriages, the succession is equally divided between the paternal and maternal lines of the deceased, the german brothers and sisters take a part in the two lines, the paternal and maternal brothers and sisters, each in their respective lines only if there are brothers and sisters on one side only, they inherit the whole succession to the exclusion of all other relations of the other line.

In all these cases, the brothers and sisters of the deceased, or their descendants, inherit in their own right or by representation, as is regulated in the section which treats of representation.

914: When the deceased has died without descendants, leaving neither brothers or sisters, nor descendants from them, nor father nor mother, nor ascendants in the paternal

or maternal lines, his succession passes to his collateral relations.

Among the collateral relations, he who is the nearest in degree, excludes all the others, and if there are several in the same degree, they partake equally and by heads, according to their number.

Article 919: Natural children are called to the inheritance of their natural father, who has duly acknowledged them, when he has left no descendants nor ascendants, nor collateral relations, nor surviving wife, and to the exclusion only of the State.

In all other cases, they can only bring an action against their natural father or his heirs for alimony, the amount of whcih shall be determined, as is directed in the title: *Of Father and Child.*

FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 5257

LOU BERTHA LABINE, Natural Tutrix of the minor child, Rita Nell Vincent,

Appellant,

versus

SIMON VINCENT, Administrator of Succession of Ezra Vincent,

Appellee.

Appeal from the Supreme Court of Louisiana

BRIEF FOR APPELLEE

JAMES A. LEITHEAD
NORMAN F. ANDERSON
Counsel for Appellee
117 West Broad Street
(Post Office Box 1299)
Lake Charles, Louisiana 70601

TABLE OF CONTENTS

TABLE OF AUTHORITIES

AUTHORITIES (Continued)

IV

AUTHORITIES (Continued)

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1970

No. 5257

LOU BERTHA LABINE, Natural Tutrix of the minor child, Rita Nell Vincent,

Appellant,

versus

SIMON VINCENT, Administrator of Succession of Ezra Vincent,

Appellee.

Appeal from the Supreme Court of Louisiana

BRIEF FOR THE APPELLEE

STATEMENT OF THE CASE

This is a contest over the estate of Ezra Vincent between his illegitimate daughter and his brothers and sisters.

He died intestate on September 16, 1968, in Rapides Parish, Louisiana, where he was hospitalized for treatment. He was 76 years of age. For many years prior to his death, the decedent had his domicile and residence in Calcasieu Parish, Louisiana, where he owned movable and immovable property. (A. 10)

At the time of his death, the decedent was survived by no spouse, no ascendants nor legitimate descendants. He was survived by brothers and sisters. By notarial act dated May 10, 1962, the decedent acknowledged to be the natural father of the minor, Rita Nell Vincent. (A. 10) At the time of the trial, she was receiving $100.00 per month from the Veteran's Administration and Social Security pensions.

The trial court found as a matter of fact that the decedent was survived by brothers and sisters and held that under the applicable Louisiana law the illegitimate child could not inherit from her natural father to the exclusion of these collateral heirs, and denied alimony for her support since she was receiving $100.00 per month and was not in need, which was a prerequisite under the State statute.

STATEMENT OF ISSUES

1. Are the provisions of the Louisiana Civil Code which make a distinction between the rights of inheritance of legitimate and illegitimate children violative of the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution?

2. Is the regulation of descent and distribution of real and personal property a matter of State law?

3. Should the holdings of *Levy and Glona* apply to the Louisiana succession laws and

change the intestacy transmission of real property?

4. Did the decedent intend that his heirs inherit under the intestacy laws of Louisiana.

5. If the distinction between the inheritance of legitimate and illegitimate children under the Louisiana succession laws are unconstitutional, should this rule be applied retroactively so as to divest vested rights in real property?

ARGUMENT

I.

The Louisiana Civil Code Articles Distinguishing Between Legitimate And Illegitimate Children For The Purpose Of Laws Of Intestate Successions Are Constitutional, And Do Not Violate The Fourteenth Amendment.

The succession laws relating to illegitimate children are found in the chapter of the Louisiana Civil Code which relates to "Of Irregular Successions". This chapter treats illegitimates differently from legitimates, based upon the principle announced in Article 24 of the Louisiana Civil Code:

"Laws on account of differences of condition have established between persons essential differences with respect to their civil, social and political rights."

Some of the distinctions drawn by the Louisiana Civil Code reflect the natural law concepts which have influenced human action for generations. For example, the Code recognizes that natural mothers possess stronger ties with their children than fathers by providing in Article 918 that illegitimate children recognized by their natural mothers shall inherit their mother's succession to the exclusion of her legitimate parents or collaterals. On the other hand, the illegitimate child of the father is not accorded such a high rank in his succession under the provisions of Article 919, which provides that natural children of the father are called to his inheritance only when he has left no descendants, ascendants or collateral relations, or surviving wife. This principle again appears in Louisiana Civil Code Article 256, which establishes the natural mother as tutrix of her natural child not acknowledged by the father, or acknowledged by him alone without her concurrence.

The complementary nature of rights and duties existing between parents and children illustrate the rationality of the Louisiana Civil Code classification based upon legitimacy. Article 26 states that birth subjects legitimate children to the power and authority of their parents. Article 238, on the other hand, provides that illegitimate children are not subject to parental authority even if they have been legally acknowledged. Thus, an illegitimate child is free from the restrictions and control which might be exercised by his parents. The illegitimate child need not submit to parental discipline or obtain parental consent to enter into contracts, including the contract of marriage. The legitimate child cannot sue either parent during the con-

tinuation of their marriage under the provisions of Louisiana Revised Statute 9:571. However, the illegitimate child suffers no such disability. The illegitimate child has free use of his property, but Louisiana Civil Code Article 223 grants a right of enjoyment in favor of the parents on the estate of legitimate children during their minority. The legitimate father is the administrator of the estate of his minor child and may bring actions on his behalf by a provision of Louisiana Code of Civil Procedure, Article 683. It is entirely reasonable that an illegitimate child, free from these various forms of parental control and burdens on his estate, should be placed in a different position for the purpose of the laws of inheritance.

The entire Louisiana Civil Code presupposes that the fundamental unit of organized society is the family, and it is incomprehensible to believe that the law cannot make some attempt to advance a public policy favoring viable and stable family units, and disfavoring promiscuity. Article 1493 provides for forced heirship in favor of legitimate children, and if none survive, in favor of parents of the decedent under Article 1494. Even if the laws of inheritance could be shown to have a little effect on the rate of illegitimacy, the inheritance laws, by protecting the family as a social, economic and fundamental unit, are not subject to the prohibitions of the 14th Amendment because in practice they may result in some inequalities or that it may fail to bring about the desired result.[1] The realities of a family unit imposes restrictions and controls upon legitimate children. By the same token, the ob-

[1]Roschen vs. Ward 279 US 337, 339 (1929)

ligations imposed by family life give rise to the rights enjoyed by parents over their children's property. These restraints and controls, which have been woven into the codal fabric, are not only consistent and pervasive, but they are grounded on compelling logic.

The equal protection clause is not offended so long as there is an acceptable purpose for the law in question, and the classification is a reasonable means for achieving that purpose. The entire Louisiana Civil Code presupposes that the fundamental unit of organized society is the family. The classification of illegitimates in the Louisiana inheritance laws is a part of an overall civilian structure providing for reciprocal rights and duties between parents and their children. The classification promotes family stability by economic and social means, and encourages free commerce in property. It is all part of the public policy of the State favoring family units and disfavoring promiscuity. To hold that the inheritance statutes of the State of Louisiana are unconstitutional, the Court must find invidious, purposeful and arbitrary discrimination, wholly lacking in rationality.[2]

As stated in *Morey vs Doud, supra.*, the rules for testing a discrimination have been summarized as follows:

> "1. The equal protection clause of the Fourteenth Amendment does not take from the State the power to classify in the adoption of

---

[2]*Morey vs Doud*, 354 US 457, 1 L Ed 2d 1485, 77 Sup Ct 1344 (1957); *United States vs Burnison*, 339 US 87, 94 L Ed 675, 70 Sup Ct 503 (1950).

police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary.

2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality.

3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed.

4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary. "*Lindsley vs Natural Carbonic Gas Co.*, 220 US 61, 78, 79; 55 L Ed 369, 377; 31 Sup Ct 337; Ann Cas 1912C 160."

The fact that Louisiana uses its succession laws to encourage marriages and discourage illegitimacy, which is a valid social aim of the State, and which is related to the right of a State to enact legislation to protect the health, morals and general welfare of its citizens, is clearly within its constitutional province, and does not violate the constitutional guarantees. *Strahan vs Strahan*, 304 F. Supp. 40 (WD La, 1969).

II.

The Regulation Of Descent And Distribution Of Real And Personal Property Is Governed By State Law.

The estate of the decedent consisted of movable and immovable property all located in Calcasieu Parish, Louisiana. The power of regulating the descent and distribution of property, both real and personal, is derived from and regulated by the State in which the property is located. *Frederickson vs. Louisiana*, 23 How 445, 16 L Ed 192 (1876); *United States vs. Fox*, 94 US 315, 24 L Ed 192 (1950). The States were given this right under the Tenth Amendment to the Constitution of the United States. The title and modes of disposition of real property within the State, whether intervivos or testamentary, are not matters placed under the control of the Federal authority. *United States vs. Fox, supra, Harris vs Zion Savings Bank & Trust Co.*, 317 US 447, 63 Sup Ct 354, 87 L Ed 390 (1943). The right to inherit property is a statutory right governed by the laws where the property is situated. 26A CJS Descent and Distribution, Par. 6, Page 526.

Under the Louisiana law, the brothers and sisters of the decedent inherited to the exclusion of his illegitimate child. The applicable Louisiana Civil Code Articles provide as follows:

> *Article 919.* Natural children are called to the inheritance of their natural father who has duly acknowldged them, when he has left no descendants or ascendants, nor collateral rela-

tions, nor surviving wife, and to the exclusion only of the State. In all other cases, they can only bring an action against their natural father or his heirs for alimony, the amount of which shall be determined as is directed in the title: *Of Father and Child.*

Article 202. Illegitimate children who have been acknowledged by their father, are called natural children; those who have not been acknowledged by their father, or whose father and mother were incapable of contracting marriage at the time of conception, or whose father is unknown, are contra-distinguished by the appellation of bastards.

Article 206. Illegitimate children, though duly acknowledged, cannot claim the rights of legitimate children. The rights of natural children are regulated under the title: *Of Successions.*

The transmission of a decedent's property in Louisiana is based upon ancient legal principles, and for centuries has been the basis for the establishment of clear definitive disposition of estates. 33 *Tulane Law Review* 43 (1958), and authorities cited therein. To hold that many years after a person's death, an illegitimate child who may have been unknown at the time could assert an interest in adjudicated property would disrupt the orderly transmission of estates. There would be endless litigation and land titles would never be secure.

In *Straham vs Strahan, supra,*[3] the Court quoted with approval from *American Land Company vs Zeiss,*[4] as follows:

> "As it is indisputable that the general welfare of society is involved in the security of the titles to real estate and in the public registry of such titles, it is obvious that the power to legislate as to such subjects inheres in the very nature of government * * *
>
> "'It (the State) has control over property within its limits; and the condition of ownership of real estate therein, whether the owner be stranger or citizen, is subject to its rules concerning the holding, the transfer, liability to obligations, private or public, and the modes of establishing titles thereto. * * * The well-being of every community requires that the title to real estate therein shall be secure, and that there be convenient and certain methods of determining any unsettled questions respecting it. The duty of accomplishing this is local in its nature; it is not a matter of national concern or vested in the general government; it remains with the State; and as this duty is one of the State, the manner of discharging it must be determined by the State, and no proceeding which it provides can be declared invalid, unless it conflict with some special inhibitions of the Constitution, or against natural justice.'

---

[3]304 F Supp 40, 43 (1969)
[4]219 US 47, 60, 31 S Ct 200, 204, 55 L Ed 2d 82 (1910)

"* * * Undisclosed and unknown claimants are, to say the least, as dangerous to the stability of titles as other classes. This principle received recognition and was applied in *Hamilton v. Brown*, 161 U. S. 256, 16 S. Ct. 585, 40 L. Ed. 691, where it was held to be competent for a State to make provision for promptly ascertaining, by appropriate judicial proceedings, who has succeeding to property upon the death of a person leaving such property within the State. * * *.

"' * * * The power of the State as to titles should not be limited to settling them as against persons named. In order to exercise this power to its fullest extent, it is necessary that it should be made to operate on all interests, known and unknown. * * *' "

The Louisiana inheritance laws were the product of deepest legal thought. The distinctions that the writers provided to favor one class of persons over another class, and to favor legitimate children over illegitimate children does not do violance to the Constitution. These laws, and particularly the above codal articles, have worked satisfactorily for almost 200 years and they have been tempered by experience and practicality.

III.

The Holdings In Levy And Glona Should Not Apply To Louisiana Succession Laws.

The decisions in *Levy* and *Glona*[5] stand for the proposition that the denial of wrongful death benefits merely because of illegitimacy violates the due process and equal protection clauses of the United States Constitution because it constitutes an invidious discrimination. The Louisiana wrongful death statute was invalidated to the extent that it denied illegitimate children or their parents the right to recover on the same basis as the enactment permits where the birth is legitimate. The holdings of *Levy* and *Glona* decide no more than wrongful death enactment create an unreasonable exemption from tort liability by allowing illegitimacy to bar recovery of tort damages otherwise due. The decisions found only that there was no rational basis for assuming that marriage would be discouraged and illegitimacy encouraged by denying recovery for substantial wrongful death.[6] In other words, the illegitimate merely acquired a cause of action, and damages would later have to be proved, i.e., loss of love and affection and loss of support, in order to substantiate his claim.

Although these cases held that it is irrational to discriminate against illegitimates in wrongful death statutes, there is a rational basis in so discriminating in inheritance statutes. The distinction in the Louisiana

---

[5] *Levy vs. State of Louisiana*, 391 US 68; 88 S Ct 1509; 20 L Ed 2d 436 (1968); *Glona vs American Guarantee & Liability Insurance Company*, 391 US 73; 88 S Ct 1515; 20 L Ed 2d 441 (1968)

[6] Strahan vs Strahan, supra.

succession laws between legitimate and illegitimate children is not arbitrary or without reasonable basis, but on the contrary, is reasonable and rational, since the State has a paramount interest in encouraging the stability of family, and toward that interest, State legislation to encourage family units must go unchallenged.[7]

IV.

The Decedent Intended That His Estate Be Governed By The Intestate Laws Of Louisiana.

Intestacy laws generally have been founded upon two underlying principles. First, and more historic, is that in order to protect the family unit, property should devolve within that unit. Second, and more modern, is that such laws amount to a statutory will, merely carrying out the intent of the decedent had he written a will.[8]

Ezra Vincent had the right to rely on valid existing State laws to determine whether he should make a will or whether the intestacy laws of the State would govern his estate. He chose the latter as this was the manner he wished that his property be transmitted after his death. Should this Conrt now hold in effect that his estate shall fall to his illegitimate child, disregarding the decedent's intention, and not give the decedent the right — his personal right — to make this choice would be denying him due process of law.

---

[7]Murphy vs. Houma Well Service, 43 Fed 2d 509 (5th Circ., 1969)
[8]3 Planoil, *Civil Law Treatise*, Sec. 1700. (La. Law Inst. Transl. 1959); 23 Ame. Jur. 2d 757, p. 10 (1965)

Ezra Vincent made his choice that his estate be governed by the intestate laws of Louisiana, and now that he is dead, his choice cannot be changed.

Had Ezra Vincent intended that his illegitimate child inherit from him and if he wished to change the order of intestacy laws of Louisiana, he could have written a will. The fact that he acknowledged the child before a Notary Public and did not at the same time make a will, indicates that he intended that the intestacy laws apply. Or, if later he wished to make his illegitimate child his heir, another avenue was opened to him. He could have married the natural mother (there was no impediment to a marriage) and thus legitimated his illegitimate child.[9] Or still further, a third avenue was opened to him if he wanted to change the course of the intestate laws by adopting the child.[10] That he saw fit to do none of these acts indicates strongly that he intended that his estate be governed by the intestate laws of Louisiana, and that his property be inherited by his brothers and sisters.

---

[9]Article 198, Louisiana Civil Code
[10]Article 214, Louisiana Civil Code

V.

Alternatively, Should This Court Decide That Distinctions Made Between Legitimates And Illegitimates Are Unconstitutional For Purposes Of Succession, That Decision Should Only Be Applied Prospectively.

When a man dies leaving legal heirs, the property becomes vested upon his death. Article 940 of the Louisiana Civil Code provides:

> "A succession is acquired by the legal heir, who is called by law to the inheritance immediately after the death of the deceased person to whom he succeeds.
>
> "This rule applies also to testamentary heirs, to instituted heirs, and universal legatees, but not to particular legatees."

This principle was affirmed by the Louisiana Supreme Court in *Succession of Simms*, 195 So. 2d 114, 250 La. 177 (1967).

The die was cast at the time of Ezra Vincent's death. The right of inheritance was governed by the laws in effect at the moment of death at which time the rights of inheritance vested. Once real rights have become vested, a new law cannot impose new obligations or new duties with respect to transactions already consummated. The new laws would only affect those transactions which would occur in the future. In others

words they would be applied prospectively only.[11]

To hold that illegitimate children have the right to come in, years later, and assert a claim to an estate would create havoc to the real property rights in Louisiana. If this Court should decide that illegitimates should inherit irrespective of State law, there are many questions that immediately come to mind and the Courts would have to legislate on many points. Would an illegitimate child of the father who was informally acknowledged have the same rights as one who was formerly acknowledged. Would there be a distinction between natural children as defined by the Louisiana Civil Code and unacknowledged illegitimate children. (Articles 918-920). Would illegitimates inherit equally with legitimate children, or if there were no legitimate children, would they exclude the parents who are forced heirs.

In the area of criminal law, the Court has codified rules which must be followed if the results of police interrogation of a person in jeopardy are to be used in evidence, and these rules were held not only to be not retroactive, but also only applicable to trials that began after the dates on which the respective decisions were announced.[12] But in those cases the parties to the litigation were living, and the evidence if illegally obtained could be excluded in a new trial. But in this present case, that is not the situation at all. Ezra Vincent's rights terminated at his death.

---

[11]Vol. 10 Ame. Juris. 956, Bastards par. 153; Henry vs Jean 238 La 314; 115 So 2d 363 (1959)

[12]*Johnson vs. New Jersey*, 384 US 719 (1966); *Escobedo vs. Illinois*, 378 US 478 (1964); *Miranda vs. Arizona*, 384 US 436 (1966).

The people of Louisiana have relied on the provisions of the Louisiana Civil Code in deciding whether or not to write a will, and the entire legal profession has relied on these provisions in determining the merchantability of title to real estate. A decision of this Court changing the order of things that have existed in Louisiana for many years would place every land title in the State in jeopardy.

CONCLUSION

It is respectfully submitted that the succession laws of Louisiana making a distinction between legitimate and illegitimate children are constitutional, and that this Court should not extend the limited ruling in *Levy* and *Glona* as to case involving inheritance rights. Alternatively, should this Court feel compelled to invalidate a large section of the Louisiana Civil Code, as well as cast a cloud over the inheritance statutes of other States, the rule should be applied only prospectively to avoid endless litigation.

Respectfully submitted,

NORMAN F. ANDERSON
JAMES A. LEITHEAD
Counsel for Appellee
117 West Broad Street
(P. O. Box 1299)
Lake Charles, Louisiana 70601

The State of Louisiana, as *Amicus Curiae*, supports the position of Appellee in upholding the Constitutionality of the provisions of the Louisiana Civil Code as expressed in the case of *Labine vs. Vincent*, Court of Appeal, Third Circuit, State of Louisiana, 229 So. 2d 449 (1970), and for the reasons expressed herein.

Attorney General
State of Louisiana

CERTIFICATE

I, Norman F. Anderson, member of the Bar of the Supreme Court of the United States, do hereby certify that a copy of the foregoing Brief of Appellee has been deposited this day in the United States mail, postage prepaid addressed to James J. Cox, Attorney at Law, 702 Kirby Street, Lake Charles, Louisiana 70601.

Lake Charles, Louisiana, December ____, 1970.

NORMAN F. ANDERSON

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 5257

LOU BERTHA LABINE, Natural Tutrix of Minor Child, RITA NELL VINCENT,

Appellant,

—against—

SIMON VINCENT, Administrator of the Succession of EZRA VINCENT,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF LOUISIANA

MOTION FOR LEAVE TO FILE BRIEF, *AMICUS CURIAE*, AND BRIEF OF AMERICAN CIVIL LIBERTIES UNION, *AMICUS CURIAE*

HARRY D. KRAUSE
903 Silver Street
Urbana, Illinois 61801

NORMAN DORSEN
40 Washington Square South
New York, New York 10012

MELVIN L. WULF
American Civil Liberties Union
156 Fifth Avenue
New York, New York 10010

Attorneys for
American Civil Liberties Union

INDEX

TABLE OF AUTHORITIES:

Cases:

PAGE

Other Authorities:

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 5257

LOU BERTHA LABINE, Natural Tutrix of Minor Child, RITA NELL VINCENT,

Appellant,

—against—

SIMON VINCENT, Administrator of the Succession of EZRA VINCENT,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF LOUISIANA

Motion of American Civil Liberties Union for Leave to File Brief, *Amicus Curiae*

Pursuant to Rule 42(3) of the Rules of this Court, the American Civil Liberties Union respectfully moves for leave to file a brief *amicus curiae* in the above-entitled case. The attorney for appellant has consented to the filing of the attached brief.[1] The attorney for appellee did not reply to the request for consent.

The American Civil Liberties Union has a long-standing institutional interest in protecting the constitutional rights of children, legitimate and illegitimate. Attorneys of the American Civil Liberties Union appeared before this Court in recent years to argue *In Re Gault*, 387 U.S. 1

[1] The letter of consent has been filed with the Clerk of the Court.

(1967) and *Levy* v. *Louisiana*, 391 U.S. 68 (1968). The former decision held that children involved in juvenile proceedings were entitled to a wide range of constitutional protections in such proceedings. The latter decision held that illegitimate children were entitled as a constitutional matter to pursue an action for money damages incurred by the wrongful death of their natural mother.

The case at bar draws into question the right of an illegitimate child to inherit from her natural father. The question is a complex one which involves construction of the equal protection clause of the Fourteenth Amendment. We believe that our brief, written principally by two scholars who have engaged in litigation involving questions closely related to the one at issue in this case, and who have also written extensively in professional journals on those questions, will be of substantial assistance to the Court.

Respectfully submitted,

MELVIN L. WULF
Attorney for Movant

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 5257

LOU BERTHA LABINE, Natural Tutrix of Minor Child, RITA NELL VINCENT,

Appellant,

—against—

SIMON VINCENT, Administrator of the Succession of EZRA VINCENT,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF LOUISIANA

BRIEF OF AMERICAN CIVIL LIBERTIES UNION, *AMICUS CURIAE*

Interest of *Amicus Curiae*

The interest of *Amicus Curiae* is set out in the Motion for Leave to File, *supra*.

The Question Presented

Whether Louisiana's statutes, Civil Code Articles 206, 919 (1870), which deny a minor illegitimate child who was acknowledged by his father during the latter's lifetime a right to inherit from his father but would, solely on the basis of the criterion of legitimacy, pass the father's inheritance to collateral legitimate relatives, are unconstitutional and therefore invalid under the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the Constitution of the United States.

Statement of the Case

The decedent Ezra Vincent died intestate. He left no spouse, ascendants, nor legitimate descendants. He was survived only by his illegitimate daughter, Rita Nell Vincent, and collateral relatives. The latter seek to inherit from him to the exclusion of the illegitimate daughter under Louisiana Civil Code Articles 206, 919 (1870). Decedent's daughter had been formally acknowledged by him by notarial act during his lifetime in accordance with Louisiana law.

The lower court held that the acknowledged illegitimate child had no right to inherit from her father and was not entitled to support from his estate. *In Re Vincent,* 229 So.2d 449, 452 (La. Ct. App. 1969). This appeal was taken from this judgment.

ARGUMENT

I.

The Louisiana laws in issue are unconstitutional under the Equal Protection and Due Process Clauses of the Fourteenth Amendment.

The Louisiana court reasoned that the state has "great latitude in making classifications," especially in the area of descent and distribution, which it viewed as "peculiarly within the powers reserved to the states." *In Re Vincent,* 229 So.2d 449, 451 (La. Ct. App. 1969). The principle that a state has great latitude in making classifications *in the economic area* is conceded. It does not extend, however, to matters involving a "fundamental right and liberty"

or a "basic civil right of man." Regulations infringing that area will be scrutinized strictly. *Harper* v. *Virginia Board of Elections*, 383 U.S. 663, 669, 670 (1966); *Skinner* v. *Oklahoma*, 316 U.S. 535, 541 (1942). When fundamental rights are involved, even a rational relationship between the regulation and a permissible legislative purpose of the state may not suffice to uphold the regulation. Instead, the presumption of constitutionality normally accorded state enactments is reversed, McKay, *Political Thickets and Crazy Quilts: Reapportionment and Equal Protection*, 61 Mich. L. Rev. 645, 666, 667 (1963), and the regulation will stand only if it is "necessary to promote a *compelling* governmental interest," *Shapiro* v. *Thompson*, 394 U.S. 618, 634 (1969).

The illegitimate child is claiming a "fundamental right or liberty" or "a basic civil right of man."[1] The child's interest in a legal relationship with its father goes far beyond economics, although it has economic incidents of which inheritance is one. The child's claim centers on his father and extends to his second-class status in our society —a society in which illegitimacy is a "psychic catastrophe"[2]

---

[1] The illegitimate's demand for relief from discrimination has gained world-wide recognition as a basic human right. In January, 1967, a subcommission of the Commission on Human Rights of the United Nations adopted a statement on "General Principles on Equality and Non-Discrimination in Respect of Persons Born Out of Wedlock" which demands that "every person, once his filiation has been established, shall have the same legal status as a person born in wedlock." Sub-Commission on Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights, United Nations Economic and Social Council, *Study of Discrimination against Persons Born out of Wedlock: General Principles on Equality and Non-Discrimination in Respect of Persons Born out of Wedlock*, U.N. Doc. E/CN. 4 Sub. 2/L 453 (13 Jan. 1967).

[2] "In the case of illegitimate birth the child's reactions to life are bound to be completely abnormal . . . . To be fatherless is hard

and in which recovery in tort is granted for a false allegation of illegitimacy.[3] Indeed, the psychological effect of the stigma of bastardy upon its victim[4] is comparable to the damaging psychological effects upon the victims of racial discrimination.

The analogy to racial discrimination goes deeper. Although illegitimacy, on its face, seems to be a neutral

---

enough, but to be fatherless with the stigma of illegitimate birth is a psychic catastrophe." Fodor, *Emotional Trauma Resulting From Illegitimate Birth*, 54 ARCHIVES OF NEUROLOGY AND PSYCHIATRY 381 (1945).

[3] The following is an abbreviated list of defamatory epithets compiled in a leading textbook on torts: ". . . immoral or unchaste, or 'queer' . . . a coward, a drunkard, a hypocrite, a liar, a scoundrel, a crook, a scandalmonger, an anarchist, a skunk, a bastard, a eunuch . . . because all of these things obviously tend to affect the esteem in which he is held by his neighbors." Prosser, *Torts*, 757-58 (3rd ed. 1964).

[4] In Jenkins, *An Experimental Study of the Relationship of Legitimate and Illegitimate Birth Status to School and Personal and Social Adjustment of Negro Children*, 64 AM. J. SOCIOLOGY 169 (1958), the author investigated whether there were significant differences in the "adjustment" of legitimate and illegitimate Negro school children. All children in the (unfortunately rather small) sample were recipients of Aid to Dependent Children's funds and otherwise lived in comparable economic and social circumstances. "Adjustment" was considered to be reflected in I.Q., age-grade placement, school absences, academic grades, teacher's rating, and personal and social adjustment as measured by the California test of personality. Jenkins reported that:

> "Two primary patterns emerged in this study. First, the legitimate children rated higher in every area except school absences . . . .
>
> The second discernible pattern was that the older group of illegitimate children consistently made a poorer showing than the younger group, in comparison with the legitimate children. A possible explanation for this is that, as these children grow older and are able to internalize fully the concept of illegitimacy and as they become increasingly aware of their socially inferior status, their adjustment to self and society may become progressively less satisfactory." *Id.* at 173.

criterion, it actually operates far more severely upon Negroes as a class than it does upon whites. First, disproportionately more black children than white children are born out of wedlock. The black illegitimacy rate recently stood at a national average of 29.4 percent, whereas the white rate stood at 4.9 percent. U. S. News and World Report, March 30, 1970 at 30. This means that our law of illegitimacy has the effect of denying more than one in four black children a legal relationship with its father. Second, a far higher percentage of white illegitimates than black illegitimates find parents through adoption. The white adoption rate has been estimated to be 70 percent whereas the black adoption rate ranges between 3 and 5 percent. *Bureau of Public Assistance, U. S. Department of Health, Education, and Welfare, Illegitimacy and its Impact on the Aid to Dependent Children Program* 35-36 (1960); *cf.* Hylton, *Trends in Adoption* 1958-1962, 44 *Child Welfare* 377 (1965). This means that an overwhelming percentage of children affected by laws discriminating on the basis of illegitimacy are black—and it is thus no coincidence that the children involved in *Levy* and in this case are black. In the brief for the N. A. A. C. P. Legal Defense and Educational Fund, Inc., and National Office for the Rights of the Indigent as Amici Curiae at 20, *Levy* v. *Louisiana*, 391 U.S. 68 (1968), this matter was illustrated pointedly:

> "Applying the national percentage on white adoptions (70%) and non-white adoptions (4%) to the 1965 Louisiana illegitimacy figures (1,158 white, 8,276 Negro); only 347 white children remain unadopted, whereas 7,945 Negro children remain unadopted. *This means that 95.8 percent of all persons affected by the*

> *operation of the Louisiana Wrongful Death Act are Negroes.* For all practical purposes this means that the criterion of illegitimacy as used under the Louisiana Wrongful Death Act is synonymous with a *racial* classification."

In this light it is plain that the case should be governed by the standard set forth in *Shapiro.* Compare *Levy* v. *Louisiana,* 391 U.S. 68, 71 (1968), where the Court termed the criterion of illegitimacy "invidious" and spoke of the "intimate, familial relationship between [an illegitimate] child and his own mother."

This Court has explained that "[i]n determining whether or not a state law violates the Equal Protection Clause, we must consider the facts and circumstances behind the law, the interests which the State claims to be protecting, and the interests of those who are disadvantaged by the classification." *Kramer* v. *Union Free School District,* 395 U.S. 621, 626 (1969). In terms of this test, the Louisiana court's references to state policies that supposedly justify the discrimination are wholly unconvincing. In that court's view, two reasons justify discrimination against the illegitimate child under the inheritance statute. First, the discrimination "may within the legislative discretion properly have a tendency to encourage marriage and discourage illegitimacy, valid social aims of the state." The court's second point concerned the potential ill effect that a decision allowing the illegitimate child to inherit might have on "the stability of . . . land titles and [on] the prompt and definitive determination of the valid ownership of property left by decedents." *In Re Vincent,* 229 So.2d 449, 452 (La. Ct. App. 1969).

The first argument has been answered by this Court. As the court below acknowledged, this Court has held that discrimination in terms of a child's wrongful death claim cannot be supported on the ground that it encourages marriage and discouraged illegitimacy. *Levy* v. *Louisiana*, 391 U.S. 68 (1968); *Glona* v. *American Guarantee & Liability Ins. Co.*, 391 U.S. 73 (1968). The Louisiana court's attempt to distinguish between a recovery for wrongful death and inheritance in terms of their impact on encouragement of marriage and discouragement of illegitimacy is implausible on its face. Not only does the *distinction* fail, but the argument that discrimination on the basis of illegitimacy is effective to discourage illegitimacy and encourage marriage is in and of itself mistaken, as the rising statistics on illegitimacy demonstrate amply.

In short, it is folly to suppose that potential illegitimate parents would be deterred from their illegitimate conduct because of the treatment the law has in store for their child. But even if an effective connection existed between the legislated stigma of illegitimacy and the state's purpose of encouraging marriage and discouraging promiscuity, that connection would not be *reasonable* in terms of the constitutional tests of due process and equal protection. It makes no sense to punish an innocent non-party for someone else's undesirable conduct. In *Levy*, the discrimination was held "invidious" because "no action, conduct, or demeanor of [the illegitimate children] is possibly relevant to the harm that was done the mother." *Levy* v. *Louisiana*, 391 U.S. 68, 72 (1968). In his concurring opinion in *Smith* v. *King*, 392 U.S. 309, 336 (1968), Justice Douglas expressed this point even more strongly when he compared the stigma of illegitimacy to the "archaic corruption of the blood, a form

of bill of attainder." Analogies also may be drawn to recent Supreme Court decisions involving alcoholics and drug addicts which suggest that punishment cannot constitutionally be imposed for a condition or status over which the individual has no control. *Robinson* v. *California*, 370 U.S. 660 (1962); *cf. Oyama* v. *California*, 332 U.S. 633 (1948).[5]

The Louisiana court's second argument merits a closer look. The court felt that the discrimination against the illegitimate child in its inheritance rights

> "might aid to avoid the disruptions and uncertainties [likely] to result from unknown and not easily ascertained claims through averments of parentage, bona fide or otherwise, as to a decendent no longer present to disprove them." *In Re Vincent*, 229 So.2d 449, 452 (La. Ct. App. 1969).

In fairness to the lower court, it should be observed that it recognized that this argument did not apply in the circumstances before it. Here the decedent had expressly acknowledged his illegitimate child during his lifetime. The question of paternity was not in issue. It seems impossible to comprehend how the lower court could have decided *this* case against *this* child on the basis of the argument that in some *other* case involving some *other* child paternity might be uncertain.

---

[5] See generally Gray & Rudovsky, The Court Acknowledges the Illegitimate: *Levy* v. *Louisiana* and *Glona* v. *American Guarantee & Liability Insurance Co.*, 118 U. Pa. L. Rev. 1 (1969); Krause, Legitimate and Illegitimate Offspring of *Levy* v. *Louisiana*—First Decisions on Equal Protection and Paternity, 36 U. Chi. L. Rev. 338 (1969).

However inapplicable to the facts before the court, this line of reasoning has broad historical implications. Blackstone and others before and after him had thought that the uncertainty of illegitimate paternity justified inferior rights for the illegitimate. *I. W. Blackstone, Commentaries on the Laws of England* 429 (Lewis ed. 1922). The dissenting opinion in *Levy* was concerned with the same question:

> "[F]or many of the same reasons why a State is empowered to require formalities in the first place, a State may choose to simplify a particular proceeding by reliance on formal papers rather than a contest of proof. That suits for wrongful death, actions to determine the heirs of intestates, and the like, must as a constitutional matter deal with every claim of biological paternity or maternity on its merits is an exceedingly odd proposition." *Levy* v. *Louisiana*, 391 U.S. 68, 80-81 (1968) (footnotes omitted).

Of course it is true that, *on the average*, illegitimate birth furnishes less convincing evidence of paternity than does birth in wedlock. But if this be so, the answer still is that even if, *on the average*, it is more difficult to trace illegitimate than legitimate paternity, a court and the law do not deal with averages. They decide individual cases. The fact that uncertainty may exist in one illegitimate paternity case and may justify a denial of recovery, is not to say that uncertainty exists in another case. Legislation is not rational if it accepts only one type of proof of paternity (marriage) and categorically excludes all other equivalent proof of parentage, such as the father's unequivocal, undisputed and formal acknowledgment of his child (as is present in this case). In short, as in other disputed fact situa-

tions, recovery should be denied if there is no proof of paternity, but granted if there is. It should be emphasized here that modern scientific methods of ascertaining paternity have moved the ascertainment of paternity far beyond speculation.[6]

The argument concerning uncertainty of illegitimate paternity has another dimension. It might be said that, since illegitimate *paternity*, in general, is more difficult to ascertain than illegitimate *maternity*, *Levy* and *Glona* (which involved maternal descent) are distinguishable from cases involving paternal descent (such as this case). Indeed, it may be that there are valid reasons to distinguish the mother-child relationship from the father-child relationship *for some purposes* (although it is difficult to see how, with respect to the right of inheritance, such a distinction could be maintained). Analyzed accurately, however, the illegitimate's claim against his father does not rest on an analogy to his claim against his mother. Rather, the illegitimate's claim against his father rests on comparison with the legitimate child's rights against its father, just as the illegitimate's claim against his mother rests on comparison with the *legitimate* child's rights against its mother. Specifically,

---

[6] See, *e.g.*, L. SUSSMAN, BLOOD GROUPING TESTS—MEDICOLEGAL USES (1968); Henningsen, *Some Aspects of Blood Grouping in Cases of Disputed Paternity in Denmark*, 2 METHODS OF FORENSIC SCIENCE 209 (1963). This is not to say that a legislature could not set a reasonable standard of proof of paternity. On the contrary, it would be desirable if the legislature would set a satisfactory, rational standard of proof of paternity in the very state interest the dissenting opinion in *Levy* invokes—the interest "to simplify a particular proceeding by reliance on formal papers rather than a contest of proof." *Levy* v. *Louisiana*, 391 U.S. 68, 80 (1968). But the legislature has not done so here, nor are there many examples of other legislatures that have established a rational standard of proof of paternity.

it rests on the answer to the question whether legislation denying to the illegitimate rights against his father (or mother) that are granted to children of legitimate birth is related to a proper public concern with respect to which legitimate and illegitimate children are not situated similarly. This question is the proper issue in these cases.

It was answered in the *Levy* case with regard to the child's relationship to his *mother* to the effect that no proper legislative purpose justifies discrimination between legitimate and illegitimate children. The extension of *Levy* to the father-child relationship therefore must rest on the result of an inquiry as to (1) whether there are legislative purposes which support discriminatory legislation in the father-child context that are not present in the mother-child context, and (2) whether such other or additional purposes pass the test of the Fourteenth Amendment.

There are no such purposes. See Krause, *Equal Protection for the Illegitimate,* 65 Mich. L. Rev. 477, 489-500 (1967). Instead, it is clear that our long continued acceptance of legislatively enforced inequality between legitimate and illegitimate children rests on much the same ground as did the inferior position of women, Negroes, and other classes through the centuries—prejudice. There has been a long history of discrimination against the illegitimate. This very history of discrimination was invoked by the Louisiana court in justifying its holding against the child. *In Re Vincent,* 229 So.2d 449, 452 (La. Ct. App. 1969). Much of the discrimination may be traced to the medieval Church which, in both its concern for the divorceless family and its aversion to illicit sex, reinforced the father, whose self-interest may ultimately have been most directly re-

sponsible for the situation of the illegitimate. It was only human for men, as legislators, to limit their accidental offsprings' claims against them, economically and in terms of a family relationship.

The issue of inheritance, of course, may arise in a variety of contexts. In certain factual settings, legislated discrimination between children may be justifiable or even desirable. For example, an intestacy statute that first assured the continued support of a minor child before passing inheritance to an adult child of the deceased probably would represent a valid exercise of legislative discretion. But to agree with the principle that *some* discrimination involving inheritance rights might be constitutionally supportable in *some* factual settings says nothing about this case. Here, the contest is between a minor child of the deceased father and the father's collateral relatives. No wife of the decedent and no legitimate child of his is in the picture. No matter how broad a view might be taken of the state's power and discretion to classify, the law under attack is patently unreasonable when it gives this man's inheritance to his collateral relatives and denies it to his own acknowledged minor child.[7]

---

[7] A number of other states allow the illegitimate to inherit from his father under various conditions. E.g., ARIZ. REV. STAT. ANN. § 14-206B (1956); CAL. PROB. CODE § 255 (West Supp. 1968); FLA. STAT. ANN. § 731.29 (1964); IDAHO CODE ANN. § 14-104 (1948); see generally Krause, Bringing the Bastard into the Great Society, A Proposed Uniform Act on Legitimacy, 44 Tex. L. Rev. 829, 854-56 (1966).

II.

A decision in favor of the illegitimate child would be consistent with modern legislative trends.

While substantial discrimination continues to limit the legal relationship between a father and his illegitimate child, newer laws have become increasingly considerate of the child's interests. Where there has been modern legislation on illegitimacy, it has reduced the impact of the ancient doctrine of *filius nullius*. Support rights against his father today are available to the illegitimate in most though not in all states. Paternal inheritance is available to him in several jurisdictions. Worth noting in this context is a new law passed in North Dakota in the wake of *Levy* and *Glona*:

> "Every child is hereby declared to be the legitimate child of his natural parents, and is entitled to support and education, to the same extent as if he had been born in lawful wedlock. He shall inherit from his natural parents, and from their kindred heir, lineal and collateral." N.D. Cent. Code § 56-01-05 (1969 Supp.).

Another development of considerable interest is that at its meeting in Dallas in 1969, the National Conference of Commissioners on Uniform State Laws approved the Uniform Probate Code, which gives the illegitimate child inheritance rights equal to that of his legitimate brother. It provides as follows:

§ 2-109:

> "If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through or from a person,

(a) an adopted person is the child of an adopting parent and not of the natural parents except that adoption of a child by the spouse of a natural parent shall have no effect on the relationship between the child and his natural parents.

(b) In cases not covered by (a), a person born out of wedlock is a child of the mother. That person is also a child of the father, provided;

(1) The natural parents participated in a marriage ceremony before or after the birth of the child, even though the attempted marriage is void; or

(2) The paternity is established by an adjudication before the death of the father or is established thereafter by clear and convincing proof, except that the paternity established under this subparagraph (2) is ineffective to qualify the father or his kindred to inherit from or through the child unless the father has openly treated the child as his, and has not refused to support the child.

COMMENT: The definition of "child" and "parent" in Section 1-201 incorporates the meanings established by this section, thus extending them for all purposes of the Code.

Years earlier, the National Conference of Commissioners on Uniform State Laws had gone on record in § 1 of the Uniform Paternity Act, 9B Uniform Laws Ann. 155 (Supp. 1964), in favor of full equality between legitimate children in terms of their right of paternal support. Currently, the National Conference's Committee on a Uniform Legitimacy Act is drafting legislation that will carefully regulate the

important question of ascertainment of paternity and reaffirm the equality of rights of support and inheritance previously promised by the Conference. Uniform Legitimacy Act, First Tentative Draft, National Conference of Commissioners on Uniform State Laws, June 1, 1970.

CONCLUSION

For the reasons stated above, the judgment below should be reversed.

Respectfully submitted,

HARRY D. KRAUSE
903 Silver Street
Urbana, Illinois 61801

NORMAN DORSEN
40 Washington Square South
New York, New York 10012

MELVIN L. WULF
American Civil Liberties Union
156 Fifth Avenue
New York, New York 10010

Attorneys for
American Civil Liberties Union

November 27, 1970

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 5257

LOU BERTHA LABINE, Natural Tutrix of Minor Child, Rita Nell Vincent,

Appellant,

—against—

SIMON VINCENT, Administrator of the Succession of Ezra Vincent,

Appellee.

On Appeal From the Supreme Court of Louisiana

BRIEF OF ATTORNEY GENERAL FOR THE STATE OF LOUISIANA

JACK P. F. GREMILLION,
Attorney General of Louisiana,
Louisiana Capitol Building,
Baton Rouge, Louisiana.

INDEX

STATUTES

In the
Supreme Court of the United States

OCTOBER TERM, 1970

No. 5257

LOU BERTHA LABINE, Natural Tutrix of Minor Child, Rita Nell Vincent,

Appellant,

—against—

SIMON VINCENT, Administrator of the Succession of Ezra Vincent,

Appellee.

On Appeal From the Supreme Court of Louisiana

BRIEF OF ATTORNEY GENERAL FOR THE STATE OF LOUISIANA

INTEREST OF AMICUS CURIAE

The Attorney General of Louisiana is interested in seeing that the constitutionality of the statutes and laws of the State are upheld as being constitutional. (Art. 7, Sec. 56, 1921 La. Const.)

STATEMENT OF THE CASE

An illegitimate child is claiming the estate of her father as against his legitimate brothers and sisters. The decedent, Ezra Vincent, died intestate. The District Court and the Court of Appeal of Louisiana followed the provisions of the Louisiana Civil Code Arti-

cles 206 and 919, and held that the illegitimate daughter could not inherit from her father since he left legitimate collateral relations. *In Re Vincent*, 229 So.2d 449 (La. Ct. of App. 1969).

STATEMENT OF ISSUES

I. Do the Articles of the Louisiana Civil Code making a distinction between the rights of inheritance of legitimate and illegitimate children violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution?

II. Should the regulation of descent of property rights and inheritance be a matter of State law, or should it be controlled by the Federal Judiciary?

III. Should the decisions in *Levy v. Louisiana* and *Glona v. American Guaranty and Liberty Insurance Company* be extended from the field of torts to apply also to Louisiana succession laws, and upset the orderly transmission of a decedent's estate?

ARGUMENT

I.

The articles of the Louisiana Civil Code making a distinction between the rights of inheritance of legitimate and illegitimate children do not violate the due process and equal protection clauses of the Fourteenth amendment to the United States Constitution

The Attorney General of Louisiana has no personal interest in the outcome of this litigation. It is

solely the purpose of the State of Louisiana to uphold its laws and statutes as being constitutional. We respectfully point out that the Civil Code of Louisiana, among other things, governs the inheritance of property in both testate and intestate successions. The Civil Code was adopted in 1808 and follows to a great extent the Napoleonic Code with a sprinkling of Spanish law. The principles of laws on successions in Louisiana have been almost unchanged for more than 150 years. Actually, we are informed that the Napoleonic Code was based to some extent at least on the Code of Justinian of Ancient Rome. The Louisiana Codal articles on descent, distribution and inheritance are based upon the civil law concepts. These laws obviously do favor legitimate children over illegitimate children. These laws strengthen the idea of a family unit to discourage the promiscuous bearing of children out of wedlock. Whether this is good or bad it seems is a sociological question and not a legal one.

In this brief, we will not make any effort to cite a great many authorities. We believe that the brief of the appellee, the Administrator of the Succession of Ezra Vincent, covers the legal questions fully, far better than we could do in the limited time allowed us. We strongly urge, however, that the Louisiana laws governing descent and distribution of the property of a decedent do not violate the Fourteenth Amendment to the United States Constitution. Our statutes are based upon a rational and justifiable basis, beginning with Article 27 of the Civil Code, which provides, "Children are legitimate or illegitimate. Legitimate children are

those who are born of a marriage lawfully contracted; and illegitimate children are such as are born of an illicit union."

The Code then recognizes a distinction between illegitimates themselves, i.e., first those who are born of persons who could have married at the time of conception, and those who were not legally capable of marriage (Article 181). The Code then provides for legitimation of the child by subsequent marriage of the parents (Article 198), giving the child the same rights as if he were born of the marriage (Article 199). Further, Louisiana laws provides that a child may be adopted and accorded the identical rights as if a child of the marriage (Article 214).

All of these provisions are based on the proposition that the family is a critical unit of society and tend to encourage marriage and family ties. It is submitted that these laws are rational and not arbitrary. They are just and not prejudicial to anyone. Under the guidelines for determining a violation of the equal protection clause as set forth in *Morey v. Doud*, 354 U.S. 457, clearly this law is not in violation of the United States Constitution.

II.

The Regulation of inheritance is a matter of state law and is not the subject of federal judicial action where such laws are not clearly confiscatory and have a reasonable basis

We have read with a great deal of interest the brief as an amicus curiae filed herein by the American

Civil Liberties Union. This brief attempts to inject a racial issue into this matter. Race is *not* an issue in this case. If the appellant had been white, black or yellow, the law would have treated her just the same. Apparently in search of an inflammatory issue, the American Civil Liberties Union quotes certain numerical calculations and statistics that lead to the astounding conclusion that the Louisiana law of descent and distribution discriminates against the Negro race. This is based upon the alleged statistic that twenty-nine percent of Negro children are illegitimate and only four percent of the white children are illegitimate. Following this argument to its logical conclusion, it could be argued that if twenty-nine percent of robberies are committed by Negroes and only four percent by whites, then the laws against robbery are discriminatory and unconstitutional.

The State of Louisiana urges this Honorable Court to recognize that the racial issue is irrelevant in this case, and to take cognizance of the fact that the laws of Louisiana herein attacked can be traced back centuries to the most respected judicial codes of the world. The argument that these laws are designed for racial discrimination is absolutely without merit. It is submitted that the Louisiana laws on descent and distribution and inheritance are not in conflict with any portion of the United States Constitution. These laws have a reasonable basis, and they are concerned with the health, morals and welfare of the citizens of Louisiana. Many millions of dollars in property have been transmitted under these laws, which have been thoroughly

interpreted by the Courts of Louisiana over a period of more than a century and a half.

If the Court should hold that appellant in the instant matter is entitled to inherit from her father, it will open Pandora's Box. We will have litigation for years to come, which will be most unsettling to titles and property throughout the State of Louisiana. For example, if an illegitimate child is entitled to inherit from her father today, then she would have been entitled to inherit from him five years ago, or ten years ago, or maybe twenty years ago. No title to land will be secure.

Again, if an illegitimate child inherits ahead of brothers and sisters of its father, will the illegitimate child inherit ahead of legitimate children, or equally with legitimate children? Where a father and mother have reared three legitimate children in their home for years, and the father dies, suppose four or five illegitimate children come forward and claim their share of his estate. Is this fair to his legitimate family who may have never heard of these other offspring? Again, should a distinction be made between illegitimate children that the father acknowledged as his and illegitimate children who were never acknowledged by the father, who would have to prove their parenthood through other means.

The State of Louisiana respectfully represents to this Court that to hold in favor of this illegitimate child would involve consequences that could threaten the title to every piece of property in the State of Louisiana. The laws of inheritance must be certain and should

follow the statutes, and not be subject to the decisions of individual courts in individual cases.

There is an old adage that "Hard cases make bad law". Remember that the decision in this matter will have far-reaching effects which inevitably will go far beyond the narrow confines of this particular matter. The State of Louisiana urges this Court to affirm the decisions of the Louisiana State Courts.

III.

The holdings of Levy and Glona should be applied strictly to tort cases, i.e., to the question of the right to damages for an unlawful death

There is, of course, an obvious reason for the holdings in both *Levy* and *Glona*. In one case, the children suffered a severe loss of love and affection and financial support where a mother was killed. Although the children were illegitimate, the mother was their sole support and was caring for them. They suffered a financial loss when she was killed and should be entitled to reimbursement. Similarly, in the *Glona* case, a mother suffered a loss of at least love and affection on the death of her child. It must be pointed out that there were no legitimate children in either matter and, therefore, no conflict.

We strongly urge that the holdings in *Levy* and *Glona* should be limited to the factual situations there presented, i.e., the question of damages for the actual loss of love and affection and loss of support and maintenance. However, we urge that the doctrine that an illegitimate child is entitled to damages because of

the illegal death of its mother, should not be extended to hold that an illegitimate child is entitled to inherit the estate of its father where the evidence in the case showed that the child was not being supported by its father. Louisiana laws do provide for alimony or support of an illegitimate child when the necessity is proved (Civil Code Art. 919). The Courts in the instant case, however, found that the illegitimate child, claimant herein, did not need support since she was already receiving two monthly checks.

CONCLUSION

For the reasons stated above, the Judgement of the Court of Appeal of the State of Louisiana should be affirmed.

Respectfully Submitted,

JACK P. F. GREMILLION,
Attorney General of Louisiana,
Louisiana Capitol Building,
Baton Rouge, Louisiana.

CERTIFICATE

I, JACK P. F. GREMILLION, member of the Bar of the Supreme Court of the United States and Attorney General for the State of Louisiana, do hereby certify that copies of the foregoing brief have been deposited this day in the United States mail, postage prepaid, addressed to James J. Cox, Attorney at Law, 702 Kirby Street, Lake Charles, Louisiana 70601, and to Norman F. Anderson and James A. Leithead, 117 West Broad Street, Post Office Box 1299, Lake Charles, Louisiana 70601.

Baton Rouge, Louisiana, December 22, 1970.

Jack P. F. Gremillion

JACK P. F. GREMILLION,
Attorney General of Louisiana

B-2908, 12-70

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. 5257, Misc.

LOU BERTHA LABINE, NATURAL TUTRIX OF THE MINOR CHILD, RITA NELL VINCENT,
Appellant,

versus

SIMON VINCENT, ADMINISTRATOR OF THE SUCCESSION OF EZRA VINCENT,
Appellee.

APPEALED FROM THE SUPREME COURT OF LOUISIANA

BRIEF OF AMICI CURIAE ON BEHALF OF THE BURAS HEIRS AND THE HEIRS OF EARL O. STRAHAN, URGING AFFIRMANCE

Of Counsel:

HEBERT, MOSS AND GRAPHIA
118 St. Louis Street
Baton Rouge, Louisiana 70801

McGEHEE & McKINNIS
7465 Exchange Place
Baton Rouge, Louisiana 70806

STONE, PIGMAN, WALTHER, WITTMANN & HUTCHINSON
1200 Whitney Bank Building
New Orleans, Louisiana 70130

A. LEON HEBERT
118 St. Louis Street
Baton Rouge, Louisiana 70801

E. DREW McKINNIS
7465 Exchange Place
Baton Rouge, Louisiana 70815

Attorneys for the Amici Curiae

Franklin Press, Inc. Baton Rouge, La.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Other Authorities:

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. 5257, Misc.

LOU BERTHA LABINE, NATURAL TUTRIX OF THE MINOR CHILD, RITA NELL VINCENT,
Appellant,

versus

SIMON VINCENT, ADMINISTRATOR OF THE SUCCESSION OF EZRA VINCENT,
Appellee.

APPEALED FROM THE SUPREME COURT OF LOUISIANA

BRIEF OF AMICI CURIAE ON BEHALF OF THE BURAS HEIRS AND THE HEIRS OF EARL O. STRAHAN, URGING AFFIRMANCE

MOTION FOR PERMISSION TO FILE BRIEF AMICI CURIAE

William L. Strahan and Martha H. Strahan, the legitimate heirs of Earl O. Strahan, deceased, and the legitimate heirs of

Pierre Leon Buras, respectfully move for an order permitting them to file a brief as Amici Curiae for the following reasons:

1.

The consent of the appellant and the consent of appellee has been obtained, as shown by the attached correspondence.

2.

William L. Strahan and Martha H. Strahan, the legitimate heirs of Earl O. Strahan, who died in 1964, are involved in litigation entitled, "Lyle E. Strahan v. William L. Strahan and Martha H. Strahan," Docket No. 29052 in the United States Circuit Court of Appeals, Fifth Circuit, on appeal from the United States District Court for the Western District of Louisiana, and the legitimate heirs of Pierre Leon Buras are involved in litigation entitled, "United States of America v. Leon Buras, Jr., et al," Civil Action No. 4977 on the Docket of the United States District Court for the Eastern District of Louisiana.

3.

In both the *Strahan* case which has been briefed, argued and submitted to the Fifth Circuit Court of Appeals, and the *Buras* matter, the validity of Louisiana's succession laws as they affect illegitimates are at issue. In the *Buras* case the district court has held that it was unnecessary to decide the question of whether or not the Fourteenth Amendment requires invalidation of Louisiana's succession laws as they affect illegitimates since even if the said laws are unconstitutional, the holding would not be applied retroactively since the illegitimate ancestor died in 1885. In the present appeal, an

important issue of constitutional law is involved. Moreover, because of Louisiana's distinct civil law heritage, the Court's decision in this case requires the consideration of the interrelationship of the numerous Articles of the Louisiana Civil Code and general concepts of the civil law in addition to those articles involved directly in this appeal. A decision sustaining appellant's constitutional contention in the present appeal would have a profound impact on the substantive law of Louisiana in areas of local law not directly before the court on this appeal.

4.

Petitioners will not necessarily concentrate on peculiar facts of their own cases. In the brief tendered with this motion petitioners will discuss the fundamental purposes of the intestacy laws of Louisiana and the reasonableness of the illegitimacy classification contained therein in the hope that it will assist the Court in the consideration of the issues presented on this appeal.

WHEREFORE, it is respectfully prayed that this motion for leave to file a brief amici curiae be granted.

Of Counsel:

HEBERT, MOSS AND GRAPHIA
118 St. Louis Street
Baton Rouge, Louisiana 70801

McGEHEE & McKINNIS
7465 Exchange Place
Baton Rouge, Louisiana 70806

STONE, PIGMAN, WALTHER,
WITTMANN & HUTCHINSON
1200 Whitney Bank Building
New Orleans, Louisiana 70130

By Attorneys,

A. LEON HEBERT
118 St. Louis Street
Baton Rouge, Louisiana 70801

E. DREW McKINNIS
7465 Exchange Place
Baton Rouge, Louisiana 70815

ANDERSON, LEITHEAD, SCOTT, BOUDREAU & SAVOY
ATTORNEYS AT LAW
117 WEST BROAD STREET
LAKE CHARLES, LOUISIANA
70601

November 24, 1970

Mr. Don Moss
Hebert, Moss and Graphia
Attorneys at Law
118 St. Louis Street
Baton Rouge, Louisiana 70801

Re: Labine vs. Vincent
No. 5257, O. T. 1970
U. S. Supreme Court

Dear Mr. Moss:

I have delayed answering your letter of November 2 until we had finished preparing our brief to be filed in the above matter. We are enclosing a copy for your information, and we are also enclosing a copy of the brief filed on behalf of the Appellant.

We have no objection if you wish to appear in this case as an amicus curiae. We have discussed this matter with Mr. Arthur G. Watson in Natchitoches, who has also expressed an interest in our case.

We are returning to you the brief filed on behalf of the amicus curiae in Strahan vs. Strahan in the 5th Circuit. Thank you for sending this copy to us.

I attempted to reach you by telephone today, but was informed that you were out of town, and I left word for you to call me when you returned to your office.

Yours very truly,

James A. Leithead

JAL/jk
Encl.
cc: Mr. Arthur G. Watson

LAW OFFICES OF
COX & COX
702 KIRBY STREET
LAKE CHARLES, LOUISIANA 70601
TELEPHONE 436-6611

ES J. COX

WILLIAM N. COX

December 1, 1970

Mr. A. Leon Hebert
118 St. Louis Street
Baton Rouge, Louisiana 70801

Dear Mr. Hebert:

Enclosed herewith please find my consent as requested.

It will not be necessary for Mrs. Labine to sign the consent form sent by you.

If I can be of any further help please do not hesitate to contact me.

Sincerely yours,

COX & COX

BY: _____
James J. Cox

JJC/bl

Enc.

December 1, 1970

Mr. A. Leon Hebert
118 St. Louis Street
Baton Rouge, Louisiana 70801

Dear Mr. Hebert:

This is in response to your letter of November 30, 1970, requesting my consent to the filing of a brief Amici Curiae in the case of "Lou Bertha Labine, Natural Tutrix of the Minor Child, Rita Nell Vincent, Appellant, v. Simon Vincent, Administrator of the Succession of Ezra Vincent, Appellee," No. 5257 in the Supreme Court of the United States. As attorney for the petitioner in that case I hereby give such consent.

Sincerely yours,

James J. Cox, Attorney
for Lou Bertha Labine

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. 5257, Misc.

LOU BERTHA LABINE, NATURAL TUTRIX OF THE MINOR CHILD, RITA NELL VINCENT,
Appellant,

versus

SIMON VINCENT, ADMINISTRATOR OF THE SUCCESSION OF EZRA VINCENT,
Appellee.

APPEALED FROM THE SUPREME COURT OF LOUISIANA

BRIEF ON BEHALF OF THE AMICI CURIAE

THE INTEREST OF AMICI CURIAE

Amici Curiae are both engaged in litigation involving an attack on the Louisiana laws of intestacy insofar as they distinguish between the rights of legitimate and illegitimate descendants. The factual situations presented for determination in their own respective cases are distinctly different, however, and deserve brief mention.

With respect to the *Buras* case, Pierre Leon Buras died in 1908, after which time his legitimate heirs went into possession of his estate. A title dispute between the Buras heirs and the United States is the subject of litigation presently on appeal to the Fifth Circuit Court of Appeals. Shortly prior to the trial of the case, an intervention was filed on behalf of descendants of an illegitimate child of Pierre Leon Buras who had pre-deceased him in 1885. The property rights had been vested in the legitimate descendants of Pierre Leon Buras for 61 years before the illegitimate branch, relying upon *Levy v. Louisiana*[1] and *Glona v. American Guaranty Liability Ins. Co.*,[2] presented their claim.

In *Strahan*, the decedent died in 1964, and, similarly in conformity with Louisiana intestacy laws, the decedent's mother and brother were placed in possession of the decedent's estate. Four years after the death of the decedent, an individual claiming to be the decedent's illegitimate child made a claim to the decedent's estate. One other distinguishing factor in the *Strahan* case is the fact that the decendent died partially testate, which is indicative of his intent not to provide for claimant even if he did know of his existence.

THE QUESTIONS PRESENTED

The questions presented are whether the Louisiana Civil Code articles distinguishing between legitimates and illegitimates for the purpose of the laws of intestate succession are violative of the equal protection clause of the Fourteenth Amendment of the United States Constitution, and, if so,

---

1 391 U.S. 68, 88 S.Ct. 1509 (1968).
2 391 U.S. 73, 88 S.Ct. 1515 (1968).

should such a holding be applied retroactively to divest vested rights in property.

STATEMENT OF THE CASE

Ezra Vincent acknowledged Rita Nell Vincent to be his natural child by notarial act in 1962 in accordance with the provisions of Louisiana law. He died in 1968. Under Louisiana law, the decedent could have bequeathed his entire estate to his daughter; however, he died intestate, and his estate passed to his brothers and sisters, since Louisiana laws of intestacy declare that the collaterals inherit the estate of the male decedent to the exclusion of illegitimate offspring of the decedent who have not been legitimated.

The Trial Court and the Louisiana Court of Appeal for the Third Circuit found that the collateral heirs were entitled to the estate of the decedent and that the provisions of the Louisiana Civil Code relating to the respective rights of the parties did not violate the Constitutional guaranties of the Fourteenth Amendment. This appeal lies from the denial by the Supreme Court of Louisiana of an application for certiorari or writ of review.

ARGUMENT

I. THE LOUISIANA CIVIL CODE ARTICLES DISTINGUISHING BETWEEN LEGITIMATES AND ILLEGITIMATES FOR THE PURPOSE OF THE LAWS OF INTESTATE SUCCESSIONS ARE CONSTITUTIONAL.

Appellant, relying upon the decisions of this Court in *Levy*[3] and *Glona*,[4] challenges the validity of Louisiana law

[3] Supra, note 1.
[4] Supra, note 2.

that declares the collaterals of an intestate decedent prime the rights of a decedent's illegitimate child to the decedent's estate. *Levy* held that the denial to illegitimate children of the right to recover for the wrongful death of their mother, on whom they were dependent, constitutes invidious discrimination against them. *Glona*, conversely, permitted the parent to recover for the wrongful death of her illegitimate child. Appellant seeks to apply the rationale of these cases to the intestacy laws of Louisiana. However, even a cursory review of the majority and minority decisions in those cases reflects that the Court did not intend to strike down, as *per se* unconstitutional, the distinction between legitimacy and illegitimacy for the purposes of the laws of succession. Justice Douglas, speaking for the Court, stated that in terms of equal protection, there was no reason for a tort feasor to "go free" merely because a child is illegitimate.[5] Again, in *Glona*, Justice Douglas stated that the refusals to grant a woman relief for the wrongful death of her illegitimate child created a windfall to tort feasors.[6] Similarily, the dissenting opinion in the aforementioned cases referred to the decisions as "constitutional curiosities."[7]

The *Levy* controversy raged around Louisiana's wrongful death statute. This legislation is *sui generis* and completely unrelated to inheritance law.[8] The Court observed that in the absence of such a statute all children, whether legitimate or illegitimate, are equally denied recovery for wrongful death. Since the wrongful death act automatically takes into consideration factual differences that may exist between the condi-

---

[5] Levy v. Louisiana, 391 U.S. at 71.
[6] Glona v. American Guaranty & Liability Ins. Co., 391 U.S. at 75.
[7] 391 U.S. at 73 (Harlan, J., dissenting opinion).
[8] Levy v. Louisiana, 216 So.2d 818, 253 La. 73 (1968); Guidry v. Crowther, 96 So.2d 71 (La. App. 1957); Covey v. Marquette Cas. Co., 84 So.2d 217 (La. App. 1955); Young v. McCullium, 74 So.2d 339 (La. App. 1954).

tions of legitimates and illegitimates by limiting recovery to the actual damage the child sustains, there was no rational basis terminating equality of treatment between legitimates and illegitimates with respect to the right to bring a wrongful death action when the rule of *damnum absque injuria* ended. Thus, for example, if it were true an illegitimate child has less affection for its parent and was less dependent on the parent, its loss and subsequent recovery would be more moderate. Each child is, in effect, treated as a separate class, thereby obviating the need for a legal distinction between legitimates and illegitimates.

However, this analogy cannot be extended to succession law. Unlike tort claimants, potential heirs simply cannot be treated on an individual basis. There is no legal proceeding capable of measuring the quality of potential heir's relationship with the decedent. Were such a proceeding feasible, there still would be no means for comparing conflicting claims. The State, therefore, must establish a system relating to the transmission of property that cannot, in every **individual** case, create rights of inheritance that are coextensive with the psychological and emotional bonds that existed between a particular decedent and a particular heir. Unadulterated biology would clearly be an unsuitable arbiter for a state to use in succession law. A biological test would favor siblings, the closest genetic relations, over children, and would place ascendants and descendants of the same degree on an equal footing. Spouses, barring incest, would be excluded completely.

The Louisiana Civil Code seeks to achieve stability and to facilitate the orderly transmission of property by creating a system of legal heirship, the heart of which is a rational and reasonable classification of potential heirs based on the real-

ities of family life, the furtherance of the legitimate interest and the encouragement and preservation of the family as a social institution, and the need for certainty and finality.

Chief Judge John R. Brown of the 5th Circuit Court of Appeals in the case of *Murphy v. Houma Well Service,*[9] in upholding the presumption of legitimacy found Louisiana law against an attack on the constitutionality of the presumption, commented that the underlying policies of Louisiana are certainly pertinent to the issue there under consideration. He stated:

> "In this light Louisiana undoubtedly has an interest in protecting the intimate family relationship from divisive and destructive attacks by those seeking to challenge the legitimacy of children born during wedlock. As one respected commentator in this field has stated:
>
> > " 'The propriety of the state's interest in the family therefore is beyond question, and state legislation fairly designed to encourage the stability of the family must go unchallenged.' *
>
> * "Krause, Equal Protection for the Illegitimate, 65 Mich. L.Rev. 477, 492 (1967)."

While at common law the illegitimate was a *filius nullis,* the son of nobody, a non-person who could inherit nothing,[10] the Civil law historically treated illegitimates more favorably allowing them among other rights, to inherit from the mother.[11] Modern statutes derived from codification of the

---

[9] 413 F.2d 509 (1969).

[10] See Blackstone, *Commentaries* Bk. 1 Ch. XVI P. 173 (Chase ed. 1890).

[11] See Annotation to Stevenson's Heirs v. Sullivant, 5 Wheat (U.S. 207, 5 L.Ed. 70).

common law no longer consider the illegitimate as *filius nullis*, most giving him the same status as legitimate children with regard to inheritance from his **mother**, yet properly denying him the right to inherit from his father, except by will, unless the father has formally recognized or acknowledged him.[12]

Louisiana law provides that if an illegitimate child is legitimated, he will inherit from either parent as if legitimate, i. e., as if born during marriage. The child may be legitimated by the subsequent marriage of the father and mother, coupled with any informal acknowledgment either before or after the marriage.[13] The natural parents need not even marry to legitimate a child under the provisions of Louisiana Revised Statutes 9:381. Similarly, the natural child could be adopted by a natural parent, Louisiana Revised Statutes 9:101, et seq. Each of the aforementioned alternatives would result in the child's acquiring the status of a legitimate child with respect to the legitimating or adopting parent or parents. Thus, in the case at bar as well as in the *amici* cases, the decedent could have made the illegitimate a legal heir to share with all others in the event of his intestate death. Needless to say, by testament each of the decedents could have given an inheritance to the illegitimate.

With respect to illegitimates acknowledged but not legitimated, Louisiana law provides that they inherit from the mother if there are no legitimate descendants and then to the exclusion of all others.[14] Acknowledged illegitimates inherit from the father only in the absence of lawful descendants, ascendants, collaterals, and surviving wife.[15] Unacknowledged

---

12 "Equal Protection for the Illegitimate," 65 Mich L.R. 477, 478 (1967).
13 La. Civ. Code Art. 199.
14 La. Civ. Code Arts. 918, 924.
15 La. Civ. Code Arts. 919, 924.

illegitimates do not enjoy the right of inheriting and are entitled only to alimony.[16]

By virtue of its civil law heritage, Louisiana has always resorted to an integrated code concept of law as distinguished from the well known method of the common law. Louisiana's Civil Code contains countless concepts of private law—all interrelated to form a cohesive body of law. The distinctions drawn by the Louisiana Civil Code reflect natural law concepts and social realities that have influenced human action for centuries. For example, the Code recognizes that natural mothers possess stronger ties with their children than fathers by providing in Article 918 that illegitimate children recognized by their natural mothers shall inherit their mother's succession to the exclusion of her legitimate parents or collaterals. On the other hand, the illegitimate child is not accorded such a high rank in the succession of his natural father. (The same principle supports Louisiana Revised Statutes 9:404 which allows a natural mother to surrender her child for adoption without approval of the natural father where he has not formally acknowledged or legitimated the child.) The theme appears again in Louisiana Civil Code Article 256 which establishes the natural mother as tutrix of her natural child not acknowledged by the father, or acknowledged by him alone without her concurrence.

The complementary nature of rights and duties existing between parents and children illustrates the rationality of the Louisiana Civil Code classification based on legitimacy. Article 26 states that birth subjects legitimate children to the power and authority of their parents. Article 238, on the other hand, provides that illegitimate children are not subject to paternal

[16] La. Civ. Code Art. 920.

authority even if they have been legally acknowledged. Thus, an illegitimate child is free from the restrictions and controls which might be exercised by his parents. The illegitimate child need not submit to parental discipline or obtain parental consent to enter into contracts, including the contract of marriage. The legitimate child cannot sue either parent during the continuation of their marriage under the provisions of Louisiana Revised Statutes 9:571. The illegitimate child suffers no such disability. While the illegitimate child has free use of his property Louisiana Civil Code Article 223 bestows a "right of enjoyment" on the estate of legitimate children during minority in favor of their parents. The legitimate father, unlike his natural counterpart, is the administrator of the estate of his minor child and may bring actions on his behalf by provision of Louisiana Code of Privil Procedure Article 683. It is entirely reasonable that the illegitimate child, freed from these various forms of parental control and burdens on his estate should, as a correlative, be placed in a different position for the purpose of the laws in inheritance.

The biological and anthropological realities of the family unit impose restraints and controls on legitimate children. The parents and other relatives acting as a family insure that parental power will be exercised in the child's best interest. By the same token, the obligations imposed by family life give rise to the rights enjoyed by parents over their children's property. These rights may be regarded in some degree as compensation. Thus, the legitimacy distinction woven into the codal fabric is not only consistent and pervasive, but it is grounded on compelling logic.

Short shrift cannot be given to the strong public policy favoring the family institutions. The entire Louisiana Civil

Code, from the law of successions to the law of contracts, presupposes that the fundamental unit of organized society is the family, and it is incomprehensible to believe that the law cannot make some attempt to advance a public policy favoring viable and stable family units and disfavoring promiscuity. Even if the laws of inheritance empirically could be shown to have little effect on the rate of illegitimacy, the inheritance laws, by protecting the family as an economic unit, surely support its continued existence as a social and biological one. Such an empirical demonstration has not here been made, however, and absent clear evidence to the contrary it is reasonable to assume that potential parents of illegitimates will in some measure be discouraged from producing illegitimates by any legal stigma attached to that status. **An otherwise constitutional statute is not subject to the Fourteenth Amendment's prohibitions because it might fail to bring about the desired result.**

II. ALTERNATIVELY, SHOULD THIS COURT DECIDE THAT DISTINCTIONS MADE BETWEEN LEGITIMATES AND ILLEGITIMATES ARE UNCONSTITUTIONAL FOR PURPOSES OF SUCCESSION, THAT DECISION SHOULD ONLY BE APPLIED PROSPECTIVELY.

The substantive law of Louisiana at the time of the death of Ezra Vincent gave to his daughter, Rita Nell, no interest in her natural father's successions since he was survived by collateral relations. Under the substantive law of Louisiana, the collateral heirs immediately succeed to, and are vested with, full ownership of all property rights belonging to the decedent.

An example of the recognition that inheritance rights be-

come vested upon the death of one's ancestor, and that these rights cannot be impaired or divested by a retroactive or retrospective legislation is the case of *Henry v. Jean.*[17] In 1944, Article 198 of the Civil Code was amended to provide for another manner of legitimation. The Louisiana Supreme Court, in *Henry v. Jean*, stated that the amendment to the statute created new substantive rights and could have no retrospective effect. The court further stated:

> "Of course, if the statute under consideration undertook to take away or impair vested rights acquired under the existing laws, created a new obligation or imposed a new duty or disability with respect to transactions or considerations already passed, it would have to be classified as retrospective to its operation. . . . But the legitimations resulting from the enactment of the statute have not accorded to persons legitimated any rights in the successions of persons who died before the passage of the Act, their right of inheritance being governed by legal status at the instant of death, at which time the right of inheritance vests. Articles 940, 942, 944, Civil Code."[18]

Subsequent to *Mapp v. Ohio*[19] this court declined, in *Linkletter v. Walker*[20] to grant retroactive application of its holdings so as to void convictions that had become final before *Mapp* was announced, and stated that the effect of a ruling of invalidity on prior final judgments when collaterally attacked is subject to no set principle of absolute retroactive invalidity, but depends upon a consideration of " 'particular relations . . . and particular conduct . . . of rights claimed to have become vested, or status, of prior determinations deemed to

---

17 238 La. 314, 115 So.2d 363 (1959).
18 Id. at 367 (Emphasis supplied). Similarly, see 10 Am. Jur. 2d § 153, p. 955.
19 367 U.S. 643 (1961).
20 381 U.S. 618 (1965).

have finality'; and 'of public policy in the light of the nature both of the statute and of its previous application.' "[21] Speaking of the possible retroactivity of the *Mapp* decision, the *Linkletter* court made the following observation:

> "We believe that the existence of the Wolf Doctrine prior to Mapp is 'an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration.' *Chicot County Drainage Dist. v. Baxter State Bank*, supra, 308 U.S. at 374, 60 S. Ct. at 319. The thousands of cases that were finally decided on Wolf cannot be obliterated. The 'particular conduct, private and official,' must be considered. Here 'prior determinations deemed to have finality and acted upon accordingly' have 'become vested.' And finally, 'public policy in the light of the nature both of the (Wolf Doctrine) and of its previous application' must be given its proper weight. Ibid. In short, we must look to the purpose of the Mapp rule; the reliance placed upon the Wolf Doctrine; and the effect on the administration of justice of a retrospective application of Mapp."[22]

Similarly, comment by a prosecutor or a judge upon a defendant's failure to testify in a state criminal trial violated the federal privilege against compulsory self incrimination.[23] In 1966, the Supreme Court decided in *Tehan v. Shott*[24] that the *Griffin* ruling was not to be applied to cases which had become final before it was announced. In *Tehan*, the Supreme Court stated:

> "Rather, we take as our starting point the *Linkletter* conclusion that 'the accepted rule today is that in appropriate

---

[21] Id. at 627, citing and quoting Chicot County Drainage Dist. v. Baxter State Bank, 308 U. S. 371, 374 (1940).
[22] Id. at 636.
[23] Griffin v. California, 380 U.S. 609 (1965).
[24] 382 U.S. 406 (1965).

cases the Court may in the interest of justice make the rule prospective,' that there is 'no impediment—constitutional or philosophical—to the use of the same rule in the constitutional area where the exigencies of the situation requires such an application,' in short that 'the constitution neither prohibits nor requires us to 'weigh the merits and demerits in each case by looking to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation.' 386 U.S. at 628-629, 85 S.Ct. at 1737-1738."[25]

Thus, in both cases the court emphasized as a reason for limiting retroactivity the stress which full application would impose upon the administration of justice, and weighed this stress against the dilution of the purposes of the new rules.

Similarly, in *Johnson v. New Jersey*[26] and *Desist v. United States*[27] the court refused to grant retroactive application to new constitutional pronouncements.

In short, very few of this Court's new constitutional rulings have been applied retroactively so as to overturn decisions that have been final or to alter rights (or disabilities) that have become vested. Under the rationale of these cases, great weight is given to the unsettling and disruptive effect that a retroactive application of the new constitutional principle would have. In this connection, it is important to note that these cases involved rights of personal liberty, rather than rights of property, the latter of which is before this Court. Since it is obvious that this Court has recognized the primacy of personal rights over property rights, the fact that it has held that most of its decisions concerning personal free-

---

[25] Id. at 461.
[26] 384 U.S. 719 (1966).
[27] 394 U.S. 244.

doms are not to be retroactively applied is a persuasive reason for arguing that laws with respect to the devolution of property should not be held unconstitutional retroactively.

At the same time, the Supreme Court has made the determination of whether or not its decisions would be applied retroactively by considering whether vested rights would be divested and whether the retroactive application of its decision would cause problems in the administration of the courts. In the case before this Court, were it held that the rule enunciated in *Levy* invalidated the Louisiana laws of inheritance and also that this decision would be retroactively applied, vested rights of parties would be divested, and it is indeed clear that every single land title in this state would be suspect and parties could only rely upon the laws of prescription to be certain of their ownership. Such an unsettling and disruptive influence must be avoided, since there is no primacy of public interest which would demand retroactive application, as might be the case in certain areas involving fundamental rights of personal liberty. Indeed, considerations of public interest, specifically recognized by the Court as a valid consideration, require that the *Levy* rationale not be applied retroactively. It is certainly in the public interest to avoid completely disrupting an ordered system of property rights and titles upon which persons for generations have relied.

When this Court, in *United States v. Wade*[28] and *Gilbert v. California*[29] announced a new rule excluding identification testimony in criminal trials if based on exhibition of the accused in the absence of counsel or equivalent protection, the same issue had been presented in *Stovall v. Denno*[30] decided

[28] 388 U.S. 218 (1967).
[29] 388 U.S. 263 (1967).
[30] 388 U.S. 293 (1967).

the same day. The latter case involved a review arising out of a collateral attack of a conviction, which attack was begun after the possibilities of direct review had been exhausted. The Court held that except for *Wade* and *Gilbert*, the new rule would apply only to exhibitions occurring after the date the decision was announced, **and that it would not apply in *Stovall*, decided the same day.** The Court here spoke in terms that clearly reflect a preference for prospective application in all cases.

Mr. Justice Brennan stated:

> "We recognize that Wade and Gilbert are, therefore, the only victims of pre-trial confrontations in the absence of their counsel to have the benefit of the rules established in their cases. That they must be given that benefit is, however, an unavoidable consequence of the necessity that constitutional adjudications not stand as mere dictum. Sound policies of decision-making rooting in the command of Article III of the constitution that we resolve issues solely in concrete cases or controversies, and in the possible effect upon **the incentive of counsel to advance contentions requiring a change in the law**, militate against Wade and Gilbert the benefit of today's decision. Inequity arguably results from according the benefit of a new rule to the parties in the case in which it is announced but not to other litigants similarly situated in the trial or appellate process who have raised the same issue. But we regard the fact that the parties involved are chance beneficiaries as an insignificant cost for adherence to sound principles of decision-making."[31]

Mr. Justice Brennan termed Wade and Gilbert "chance beneficiaries" and implied that were it not for the requirement

[31] Id. at 301 (Emphasis added).

that their constitutional adjudications not stand as mere dictum, even Wade and Gilbert would not receive the benefit of the decision and that the decision would be prospective only.

Judge Fairchild's article entitled **Limitation of New Judge-Made Law to Prospective Effect Only: "Prospective Overruling" or "Sunbursting"**[32] suggested that the decision to apply a constitutional holding only prospectively is reached after a consideration of six factors. Each of the six factors will be stated and then a comment will be made upon how the issue before the Court relates to the particular factor.

The first factor is how explicitly and how long ago was the "old" rule announced or recognized, and how deeply does the "new" rule modify the "old"? If this Court holds that a classification for the purposes of inheritance based upon legitimacy or illegitimacy is unconstitutional, it will have overturned a rule that traces its tradition across the entire period of the statehood of Louisiana, to the French Civil Code, and ultimately as far back as Roman law. Such a decision would drastically modify the "old" rule with respect to laws of intestate succession.

The second factor is whether the "old" rule is of a type upon which people rely in making deliberate choices of conduct or dealing. Here again, it is clear that people have relied upon the provisions of the Louisiana Civil Code in deciding whether or not to write a will, and the entire legal profession has relied upon the "old" rule in determining the validity and merchantability of title.

The next factor is. "Was the old decision really erroneous

---

[32] 51 Marquette L.Rev. 225 (1968).

when made, or have conditions changed so that it has subsequently become unjust?" The "old" decision found its basis in the explicit provisions of the Louisiana Civil Code. Any injustice in the "old" rule arises solely out of an expanded concept of equal protection.

The next factor is whether the "new" rule has been adopted primarily because it tends to prevent injustice which could, but need not **always**, result under the "old" rule. Assuming that the prior rule was unjust, it is absolutely clear that the result need not have been reached under the "old" rule, because under the law of Louisiana, legitimation of illegitimate children, in most instances, could have been effected.

The next factor is, "What is the extent of disruption which would result from retroactive application?" Here the answer is obvious. Every land title in this state would be suspect, succession proceedings would be reopened, and parties could only rely upon prescription (adverse possession) in order to be certain that their titles were valid.

The last factor is, "Have recent decisions suggested the probability of the change in the rule?" One need only cite the dissent of Justice Harlan in the *Levy* case to the effect that the decision was reached, "by a process that can only be described as brute force." There was no real expectation that the decision would have been decided in the manner it was. If this Court rules that *Levy* compels a holding that **inheritance laws** of the State of Louisiana are unconstitutional insofar as there is a classification based upon legitimacy, then the expectancy of such a decision was then even less likely. Certainly the Fifth Circuit Court of Appeals did not anticipate the *Levy* and *Glona* decisions, since the District Court's decision,

that the statute in question in *Glona* was constitutional, was affirmed **Per Curiam** by the Fifth Circuit!

Therefore, each factor advanced by Judge Fairchild, as applied to this case, would call for a limitation of any holding that the inheritance laws of Louisiana are unconstitutional to prospective application only. There is simply no overriding consideration that would merit a holding that interests vested in persons as long as sixty years ago (the case of the Buras heirs) or four years ago (in the Strahan case) be diminished or divested.

CONCLUSION

In summary, the rationale of the *Levy* and *Glona* decisions is inapplicable to laws treating legitimates and illegitimates differently with respect to their inheritance rights. *Levy* and *Glona* dealt with a wrongful death statute which is not a part of the general inheritance laws of the state.

Furthermore, intestacy statutes are designed to foster and protect the family unit and to carry out the presumed will of the decedent had he written a will. When a decedent dies without having provided for an illegitimate child, there is rational basis in a law which assumes that the illegitimate child was not part of the family unit and that the alleged father had no desire to leave him property.

To allow illegitimate children the right to inherit as if they were legitimate would cause considerable confusion in the law and would disrupt the security of land titles. Moreover, it would upset the family unit by making possible spurious claims, thereby disrupting the public order. We therefore urge affirmance of the opinion of the Court below.

Should this Court feel compelled to invalidate a large section of the Louisiana Civil Code as well as cast a cloud over the inheritance statutes of most states, the spectre of endless litigation fostered by retroactive application should be considered and the decision should only be given prospective effect.

Respectfully submitted,

Of Counsel:

HEBERT, MOSS AND GRAPHIA
118 St. Louis Street
Baton Rouge, Louisiana 70801

McGEHEE & McKINNIS
7465 Exchange Place
Baton Rouge, Louisiana 70806

STONE, PIGMAN, WALTHER,
WITTMANN & HUTCHINSON
1200 Whitney Bank Building
New Orleans, Louisiana 70130

A. LEON HEBERT
118 St. Louis Street
Baton Rouge, Louisiana 70801

E. DREW McKINNIS
7465 Exchange Place
Baton Rouge, Louisiana 70815

Attorneys for the Amici Curiae

December 30, 1970

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 5257

LOU BERTHA LABINE, Natural Tutrix of Minor Child RITA NELL VINCENT,

Appellant,

—against—

SIMON VINCENT, Administrator of the Succession of EZRA VINCENT,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF LOUISIANA

MOTION FOR LEAVE TO FILE BRIEF, *AMICUS CURIAE*, AND BRIEF OF CENTER ON SOCIAL WELFARE POLICY AND LAW, *AMICUS CURIAE*

JONATHAN WEISS
TOBY GOLICK
DAVID GILMAN
Center on Social Welfare
Policy and Law
401 West 117th Street
New York, New York 10027
Attorneys for Center on Social Welfare Policy and Law

INDEX

CITATIONS

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 5257

LOU BERTHA LABINE, Natural Tutrix of Minor Child RITA NELL VINCENT,

Appellant,

—against—

SIMON VINCENT, Administrator of the Succession of EZRA VINCENT,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF LOUISIANA

MOTION OF COLUMBIA CENTER ON SOCIAL WELFARE POLICY AND LAW FOR LEAVE TO FILE BRIEF, *AMICUS CURIAE*

Pursuant to Rule 42(3) of the Rules of this Court, the Columbia Center on Social Welfare Policy and Law respectfully moves for leave to file a brief *amicus curiae* in the above-entitled case. The attorney for appellant has consented to the filing of this brief.* The attorney for appellee refused consent.

The Columbia Center on Social Welfare Policy and Law is funded by the Office of Economic Opportunity, and is associated with the Columbia University School of Law. The Center provides assistance in research and litigation for legal services and other attorneys serving the poor.

* The letter of consent accompanies this brief.

The Center has appeared before this Court in *Goldberg* v. *Kelly*, 397 U.S. 254 (1970), *Rosado* v. *Wyman*, 397 U.S. 397 (1970) and *Wyman* v. *James*, 397 U.S. 904 (1970), and has submitted briefs *amicus curiae* in *King* v. *Smith*, 392 U.S. 309 (1968); *Shapiro* v. *Thompson*, 394 U.S. 618 (1969); *Simmons* v. *Housing Authority of West Haven*, 399 U.S. 510 (1970); *Boddie* v. *Connecticut*, 395 U.S. 974 (1969); *Sanks* v. *Georgia*, 395 U.S. 974 (1969); *Wheeler* v. *Montgomery*, 397 U.S. 280 (1970); and *Dandridge* v. *Williams*, 397 U.S. 471 (1970).

Approximately one third of the poor are illegitimate and subject to the many social and legal disabilities attendant on this status. This case challenges the constitutionality of a state law which denies the illegitimate child the right to inherit from her natural father. We believe that this brief will be of substantial assistance to the Court in dealing with the important question raised by this case, the answer to which has broad implications for the social and economic rights of the indigent.

Respectfully submitted,

JONATHAN WEISS
TOBY GOLICK
DAVID GILMAN
Columbia Center on Social Welfare Policy and Law
401 West 117th Street
New York, New York 10027

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 5257

LOU BERTHA LABINE, Natural Tutrix of Minor Child RITA NELL VINCENT,

Appellant,

—against—

SIMON VINCENT, Administrator of the Succession of EZRA VINCENT,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF LOUISIANA

BRIEF OF THE COLUMBIA CENTER FOR SOCIAL WELFARE POLICY AND LAW

Interest of *Amicus Curiae*

The interest of *amicus curiae* is set out in the Motion for Leave to File, *supra*.

Question Presented

Do the Louisiana laws which deprive an illegitimate child, acknowledged by her father, of the right to inherit in intestacy from him violate the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution?

Statement of the Case

Rita Nell Vincent is a destitute Negro child who was born out of wedlock. Ezra Vincent, her father, acknowledged the child as his own by notarial act, pursuant to Louisiana law. Ezra Vincent died intestate, leaving no legitimate descendants, and survived only by his illegitimate daughter and some collateral relatives. The Louisiana court below held that the acknowledged illegitimate child was not entitled to inherit from her father and was not entitled to support from his estate.

ARGUMENT

I.

The discrimination against the illegitimate child in this case violates the equal protection and due process clauses of the United States Constitution because it furthers no valid state purpose and deprives the child of rights based on a status over which she has no control.

The Louisiana statutes on intestate distribution create different classes of children, based on the marital status of the children's parents.[1] Children fortunate enough to have both parents married to each other are entitled to inherit in intestacy from their father.[2] Children whose parents by choice or circumstance are not married are denied any right to share in their father's estate, regardless of their

---

[1] Children may be either legitimate, illegitimate or legitimated. In addition there are subclasses of illegitimate children who are born to persons who could not legally marry: "adulterous bastards" and "incestuous bastards." Louisiana Civil Code of 1870, Articles 178-183. If the father is unknown, the children are merely "bastards," Civil Code, Article 202.

[2] Civil Code, Articles 886, 902.

relationship to their father, their father's intention, or any other consideration.[3]

The appellant here, like numerous other Negro and poor children, is a member of the class of children whose parents did not marry. Despite the fact that she was acknowledged by her father and there are no other descendants except for some collateral relations, she is excluded from any share of her father's estate by Louisiana law.

"When the existence of a distinct class is demonstrated, and it is further shown that the laws, as written or applied, single out that class for different treatment not based on some reasonable classification, the guarantees of the Constitution have been violated," *Hernandez* v. *Texas*, 347 U.S. 475, 478 (1954). While the states have wide discretion to make classifications for economic legislation, *Williamson* v. *Lee Optical Co.*, 348 U.S. 483 (1955), this Court has long viewed with suspicion classifications which encroach on basic civil rights, *Loving* v. *Virginia*, 388 U.S. 1 (1967), *Skinner* v. *Oklahoma*, 316 U.S. 535 (1942), and those which establish classifications based on race or ancestry, *Harper* v. *Virginia Board of Elections*, 383 U.S. 663 (1966). A classification based on legitimacy affects one of the most basic of rights, the right to a legal relationship to one's family, cf. *Armstrong* v. *Manzo*, 380 U.S. 545 (1965); it is by its very nature a suspect classification.

Moreover, such a classification, based as it is on status of birth, is closely analogous to discriminations based on race and ancestry which are "constitutionally suspect," *Bolling* v. *Sharpe*, 347 U.S. 497, 499 (1954), and "subject . . . to the most rigid scrutiny," *Korematsu* v. *United*

[3] Civil Code, Article 206.

States, 323 U.S. 214, 216 (1944). As this Court said in *Hirabayashi* v. *United States,* 320 U.S. 81, 100 (1943), "distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality."

Discrimination against illegitimates solely because of their illegitimacy punishes appellant for an act over which she had no control. The results of such classification are severe emotional and social disabilities,[4] comparable to the effects of race prejudice.[5] It is constitutionally impermissible for states to deny persons rights on the basis of a condition which they did not create and over which they have no control, *Robinson* v. *California,* 370 U.S. 660 (1962); *Powell* v. *Texas,* 392 U.S. 514 (1968). As this Court stated in *Levy* v. *Louisiana,* "it is invidious to discriminate against [the illegitimate children] when no action, conduct, or demeanor of theirs is possibly relevant to the harm that was done the Mother," 391 U.S. 68, 72 (1968). It is similarly invidious to discriminate against the appellant here, or any illegitimate children, solely because of their status as illegitimates. As the Court asked rhetorically in *Levy,* "why should the illegitimate child be denied rights merely because of his birth out of wedlock," *id.* at 71.

For these reasons the state should be required to show "compelling justification," *Oyama* v. *California,* 332 U.S.

---

[4] Fodor, *Emotional Trauma Resulting from Illegitimate Birth,* 54 ARCHIVES OF NEUROLOGY AND PSYCHIATRY 381 (1945).

[5] Jenkins, *An Experimental Study of the Relationship of Legitimate and Illegitimate Birth Status to School and Personal and Social Adjustment of Negro Children,* 64 AM. J. SOCIOLOGY 169 (1958).

633, 640 (1948), for its classification, but here there is not only no such compelling justification, there does not even seem to be any rational basis for the classification.

The Louisiana Court below suggested that excluding illegitimate children from the right to inherit in intestacy from their fathers promotes the cause of family unity by "encouraging marriage and the legitimization of children."[6] It is highly questionable whether this state policy underlies the statute in question here, since the statutory scheme does allow an illegitimate child to inherit if his father acknowledges him with a statement of intention that he inherit, or if there are no other claimants to the estate. If family unity is the policy here, it is a policy which the state pursues inconsistently and erratically. Imposing disabilities on the children of unmarried parents is an inappropriate method to encourage marriage; the children are the only ones affected by the disability and they are not usually in a position to force their parents to marry. If family unity and marriage is the goal there are direct ways for the state to encourage this without punishing the illegitimate child for his status. For example the state could provide incentives for marriage. Many states such as Louisiana provide only disincentives to marriage by the poor, in the form of welfare arrangements which penalize family unity[7] and in the unavailability of legal aid for divorce and legitimization procedures.

The Louisiana court below also suggested that disabilities imposed on illegitimate children discourage illegiti-

[6] *Succession of Vincent*, 229 So. 2d 449, 454 (1969).

[7] Children are eligible for assistance only if one parent is not in the home, 46 La. Stats. Ann. §231 (1966). No provision is made for children living with both parents, even if the parents earn less than they would be eligible to receive on public assistance.

macy.[8] Statistics and common sense, however, indicate that the denial of equal rights to illegitimate children does not deter the conduct which results in these births. People contemplating sexual intercourse probably do not have intestacy statutes on their minds. Despite sanctions, the number of illegitimate births increases in Louisiana each year.[9] And in any case it would be improper for a state to deal with immorality and illegitimacy by punishing dependent children, *King* v. *Smith*, 392 U.S. 309 (1968).

Other possible rationales for discrimination against illegitimate children by preventing them from inheriting in intestacy are similarly lacking. It may be argued that the Louisiana statute attempts to transfer the deceased's property in the way he would have wished if he had expressed himself. This argument rests on the questionable assumption that parents wish to exclude their illegitimate children from sharing in their estates. A deceased's real intentions are speculative in any case, and particularly speculative in this case in which the father formally acknowledged the child. Furthermore, there were no legitimate descendants except some collateral relations who did not know the deceased. The estate plans in intestacy are drawn by the state, which should not be permitted to presume discriminatory intentions, *Shelley* v. *Kraemer*, 334 U.S. 1 (1948), particularly since the deceased could have excluded illegitimate children by will. Moreover in intestacy the law is attempting to distribute the estate not only in accord-

---

[8] *Succession of Vincent*, 229 So. 2d 449, 452.

[9] Note, *The Status of Illegitimates in Louisiana*, 16 LOYOLA L. REV. 87, 114 (1969). See also *Trends in Illegitimacy in the United States 1940-1965*, National Center for Health Statistics. Series 21, No. 15 (February, 1968). Interestingly Louisiana has more illegitimate births than states with fewer sanctions against illegitimacy.

ance with the intent of the deceased, but in a way which society deems fair. If fairness is the criterion, there can be no basis for the exclusion of the illegitimate child here.

The facts of this case demonstrate that excluding illegitimate children does not necessarily lead to ease in administration of intestate estates. Here the child had uncontroverted proof of paternity, and it was the collateral claimants who had to struggle through elaborate proceedings to prove their relationship to the deceased. The possibility of an increase in false claims by allowing illegitimates to inherit should not affect the substantial constitutional rights at stake here, since the states can adequately deal with this problem by appropriate statutes of limitations and proper allocation of the burden of proof. *Glona* v. *American Guarantee & Liability Ins. Co.*, 391 U.S. 73, 76 (1968). Even if a governmental purpose is legitimate and substantial, that purpose cannot be pursued by means that broadly infringe upon basic rights, when there are available less drastic means for achieving the same ends, *Shelton* v. *Tucker*, 364 U.S. 479 (1960).

II.

Allowing the illegitimate child in this case to inherit would be consistent with the current legislative and judicial tendency to remove common law disabilities of illegitimate children.

The harsh common law doctrine that the illegitimate child is filius nullius, who can inherit from no one, has been considerably softened in recent years.[10] In 1965 New York changed its law[11] to allow illegitimate children to inherit from their mothers on an equal basis as legitimate children. Now only Louisiana denies illegitimate children equal rights of inheritance from the mother. Eighteen states allow acknowledged illegitimate children to inherit from their fathers, though the burden of acknowledgment varies somewhat from state to state.[12] Three states grant equal rights of inheritance from the father regardless of

---

[10] Note, *Illegitimacy*, 26 BROOKLYN L. REV. 45 (1961), which contains a survey of the inheritance laws in all 50 states. See also Gray and Rudovsky, *The Court Acknowledges the Illegitimate: Levy v. Louisiana and Glona v. American Guarantee & Liability Insurance Co.*, 118 U. PA. L. REV. 1 (1969).

[11] New York Estates Powers and Trusts Law §4.12(a)(1) (McKinneys 1967).

[12] Calif. Prob. Code §255 (1961); Colo. Rev. Stats. §153-2-8 (1963); Fla. Stats. Ann. §731-29 (1964); Idaho Code §14-104 (1948); Ind. Stats. §6-207 (1965) [adjudication of paternity required]; Iowa Code Ann. §633.222 (1964); Kans. Stats. Ann. §59-501 (1964); Minn. Stats. Ann. §525.172 (1969); Mont. Rev. Code §91-404 (1947); Neb. Rev. Stats. §30-109 (1964); Nev. Rev. Stats. §134.170 (1967); N.M. Stats. Ann. §29-1-18 (1953); N.Y.E. P.T.L. §4 (1967); Okla. Stats. Ann. tit. 84, §215 (1970); S.D. Comp. Laws tit. 29-1-15 (1967); Utah Code Ann. §74-4-10 (1953); Wash. Rev. Code §11-04-080 (1951); Wisc. Stats. Ann. §237.06 (1957).

acknowledgment.[13] Only four states expressly provide that the illegitimate child may not inherit from his father.[14] The legislatures of the other 26 states have not passed on the issue. In 1969, the National Conference of Commissioners on Uniform State Laws approved the Uniform Probate Code, giving illegitimate children the right to inherit in intestacy from their fathers, if paternity is established by an adjudication before the father's death or afterwards by "clear and convincing proof." The trend is plainly toward extension of inheritance rights to illegitimate children.

In recent years illegitimate children have also had their rights under federal welfare legislation expanded.[15] For example, in 1965 the Social Security Act (which had previously required reference to intestate succession laws) was amended to provide for payments to the illegitimate children of insured fathers upon "satisfactory" proof of paternity and actual dependency.[16] Illegitimates are also entitled to recover under the Veterans' Benefits Act, 38 U.S.C. §101(4) (1964) when there is satisfactory proof of paternity. Under the Longshoremen's and Harbor Workers' Compensation Act, 44 Stat. 1427 (1927), as amended 33 U.S.C. §902 (1964), recovery is allowed by illegitimate

---

[13] Arizona Rev. Stat. §14-206(A) (1956); North Dakota Cent. Code §56-01.05 (1969); Oregon Rev. Stat. §§111.231, 109.060 (1957).

[14] Ga. Code Ann. tit. 113, §§904, 905 (1935); Hawaii Rev. Stats. §577-14 (1968); Ky. Rev. Stats. §391.090 (1969); Pa. Stats. Ann. tit. 20, §1.7 (1950).

[15] See, generally, Comment, *Illegitimates: Definition of Children Under Federal Welfare Legislation*, 67 COLUMBIA L. REV. 984 (1967).

[16] Social Security Act, 42 U.S.C. §416(h)(3) (1965).

children who are acknowledged by and dependent upon the deceased.[17]

Similarly, the right of illegitimate children to support from their fathers has been expanded in recent years. Now most states provide for such support,[18] and the Courts which have ruled on the question have generally held that such support is required, *R.* v. *R.*, 431 S.W. 2d 152 (Mo. 1968); *Storm* v. *None*, 57 Misc. 2d 342, 291 N.Y.S.2d 515 (N.Y. County Family Ct. 1968); *Munn* v. *Munn*, —— Colo. ——, 450 P. 2d 68 (1969).

These developments indicate an increasing awareness that most discrimination against illegitimates is based on old and now discredited prejudice and that such discrimination should not continue to exist.

---

[17] In a number of different situations, federal courts have allowed illegitimate children to receive federal life insurance benefits payable to "children," despite the existence of state intestacy laws which would exclude such children from sharing the estate of the deceased, *Metropolitan Life Insurance Co.* v. *Thompson*, 368 F. 2d 791 (3rd Cir. 1966); *Middleton* v. *Luckenbach Steamship Co.*, 70 F.2d 326 (2d Cir.), *cert. denied*, 293 U.S. 577 (1934); *Huber* v. *Baltimore and Ohio R.R.*, 241 F. Supp. 646, 650 (D. Md. 1965); *Hammond* v. *Pennsylvania R.R.*, 31 N.J. 244, 156 A.2d 689 (1959).

[18] Krause, *Equal Protection for the Illegitimate*, 65 MICH. L. REV. 477, 478 (1967).

CONCLUSION

For the reasons stated above, the judgment below should be reversed.

Respectfully submitted,

JONATHAN WEISS
TOBY GOLICK
DAVID GILMAN
Columbia Center on Social Welfare Policy and Law
401 West 117th Street
New York, New York 10027

November 27, 1970

No. 5257

Petition for rehearing
not granted.

SUPREME COURT OF THE UNITED STATES

No. 5257.—October Term, 1970

Lou Bertha Labine, Natural Tutrix of Minor Child, Rita Nell Vincent, Appellant, *v.* Simon Vincent, Administrator of the Succession of Ezra Vincent.	On Appeal From the Supreme Court of Louisiana.

[March 29, 1971]

Mr. Justice Black delivered the opinion of the Court.

In this appeal the guardian (tutrix) of an illegitimate minor child attacks the constitutionality of Louisiana's laws that bar an illegitimate child from sharing equally with legitimates in the estate of their father who had publicly acknowledged the child, but who died without a will. To understand appellant's constitutional arguments and our decision, it is necessary briefly to review the facts giving rise to this dispute. On March 15, 1962, a baby girl, Rita Vincent, was born to Lou Bertha Patterson (now Lou Bertha Labine) in Calcasieu Parish, Louisiana. On May 10, 1962, Lou Bertha Patterson and Ezra Vincent, as authorized by Louisiana law, jointly executed before a notary a Louisiana State Board of Health form acknowledging that Ezra Vincent was the "natural father" of Rita Vincent.[1] This public acknowledgement of parentage did not, under Louisiana law, give the child a legal right to share equally with legitimate children in the parent's estate but it did give her a right to claim support from her parents or their

[1] See Brief for Appellant, Appendix, p. 8.

heirs. The acknowledgment also gave the child the capacity under Louisiana law to be a limited beneficiary under her father's will in the event he left a will naming her, which he did not do here.

Ezra Vincent died intestate (that is, without a will) on September 16, 1968, in Rapides Parish, Louisiana, leaving substantial property within the State, but no will to direct its distribution. Appellant, as the guardian of Rita Vincent, petitioned in state court for the appointment of an administrator for the father's estate; for a declaration that Rita Vincent is the sole heir of Ezra Vincent; and for an order directing the administrator to pay support and maintenance for the child. In the alternative, appellant sought a declaration that the child was entitled to support and maintenance of $150 per month under a Louisiana child support law.[2]

Relatives of Ezra Vincent answered the petition claiming that they were entitled to the whole estate. They relied for their claim upon two articles of the Louisiana Civil Code of 1870: Article 206, which provides:

> "Illegitimate children, though duly acknowledged, can not claim the rights of legitimate children . . . ."

and Article 919, which provides:

> "Natural children are called to the inheritance of their natural father, who has duly acknowledged them, when he has left no descendents nor ascendants, nor collateral relations, nor surviving wife, and to the exclusion only of the State."

The court ruled that the relatives of the father were his collateral relations and that under Louisiana's laws of

[2] La. Civ. Code Art. 240 provides: "Fathers and mothers owe alimony to their illegitimate children, when they are in need; . . . ." Art. 241 provides: "Illegitimate children have a right to claim this alimony, not only from their father and mother, but even from their heirs after death."

intestate succession took his property to the exclusion of acknowledged, but not legitimated, illegitimate children. The court, therefore, dismissed with costs the guardian mother's petition to recognze the child as an heir. The court also ruled that in view of Social Security payments of $60 per month and Veterans Administration payments of $40 per month available for the support of the child, the guardian for the child was not entitled to support or maintenance from the succession of Ezra Vincent.[3] The Louisiana Court of Appeal, Third Circuit, affirmed and the Supreme Court of Louisiana denied a petition for writ of certiorari. The child's guardian appealed and we noted probable jurisdiction. 400 U. S. 817 (1970).

In this Court appellant argues that Louisiana's statutory scheme for intestate succession that bars this illegitimate child from sharing in her father's estate constitutes an invidious discrimination against illegitimate children that cannot stand under the Due Process and Equal Protection Clauses of the Constitution. Much reliance is placed upon the Court's decisions in *Levy* v. *Louisiana*, 391 U. S. 68 (1968), and *Glona* v. *American Guaranty & Liability Insurance Co.*, 391 U. S. 73 (1968). For the reasons set out below, we find appellant's reliance on those cases misplaced, and we decline to extend the rationale of those cases where it does not apply. Accordingly, we affirm the decision below.

In *Levy* the Court held that Louisiana could not consistently with the Equal Protection Clause bar an illegitimate child from recovering for the wrongful death of its

---

[3] Rita Vincent qualifies as Ezra Vincent's child for federal social security and veteran's benefits by virtue of his acknowledgment of paternity, 42 U. S. C. § 416 (h)(3)(A)(i)(I) and 38 U. S. C. § 101 (4). No question has been raised concerning the legality under federal law of reliance upon such benefits to relieve parents or their estates from the state-imposed obligations of child support.

mother when such recoveries by legitimate children were authorized. The cause of action alleged in *Levy* was in tort. It was undisputed that Louisiana had created a statutory tort [4] and had provided for the survival of the deceased's cause of action,[5] so that a large class of persons injured by the tort could recover damages in compensation for their injury. Under those circumstances the Court held that the State could not totally exclude from the class of potential plaintiffs illegitimate children who were unquestionably injured by the tort that took their mother's life. *Levy* did not say and cannot fairly be read to say that a State can never treat an illegitimate child differently from legitimate offspring.[6]

The people of Louisiana, through their legislature have carefully regulated many of the property rights incident to family life. Louisiana law prescribes certain formalities requisite to the contracting of marriage.[7] Once marriage is contracted there, husbands have obligations to their wives.[8] Fathers have obligations to their children.[9] Should the children prosper while the parents fall upon hard times, children have a statutory obligation to sup-

---

[4] La. Civ. Code Art. 2315 (West 1952).

[5] *Ibid.*

[6] Nor is *Glona* v. *American Guaranty & Liability Insurance Co.*, 391 U. S. 73 (1968), analogous to this case. In *Glona* the majority relied on Louisiana's "curious course" of sanctions against illegitimacy to demonstrate that there was no "rational basis" for prohibiting a mother from recovering for the wrongful death of her son. *Id.*, at 74–75. Even if we were to apply the "rational basis" test to the Louisiana intestate succession statute, that statute clearly has a rational basis in view of Louisiana's interest in promoting family life and of directing the disposition of property left within the State.

[7] La. Civ. Code Art. 90–98 (West 1952).

[8] La. Civ. Code Art. 119, 120 (West 1952).

[9] "Fathers and mothers, by the very act of marrying, contract together the obligation of supporting, maintaining, and educating their children." La. Civ. Code Art. 227 (West 1952). See n. 2, *supra.*

port their parents.[10] To further strengthen and preserve family ties, Louisiana regulates the disposition of property upon the death of a family man. The surviving spouse is entitled to an interest in the deceased spouse' estate.[11] Legitimate children have a right of forced heirship in their father's estate and can even retrieve property transferred by their father during his lifetime in reduction of their rightful interests.[12]

Louisiana also has a complex set of rules regarding the rights of illegitimate children. Children born out of wedlock and who are never acknowledged by their parents apparently have no right to take property by intestate succession from their father's estate. In some instances, their father may not even bequeath property to them by will.[13] Illegitimate children acknowledged by their fathers are "natural children." Natural children can take from their father by intestate succession "to the exclusion only of the State." They may be bequeathed property by their father only to the extent of either one-third or one-fourth of his estate and then only if their father is not survived by legitimate children or their heirs.[14] Finally, children born out of wedlock can be legitimated or adopted, in which case they may take by intestate succession or by will as any other child.

These rules for intestate succession may or may not reflect the intent of particular parents. Many will think that it is unfortunate that the rules are so rigid. Others

---

[10] La. Civ. Code Art. 229 (West 1952).

[11] La. Civ. Code Art. 915 (West 1952).

[12] La. Civ. Code Art. 1493–1495 (West 1952).

[13] "Natural fathers and mothers can, in no case, dispose of property in favor of their adulterine or incestuous children, unless to the mere amount of what is necessary to their sustenance, or to procure them an occupation or profession by which to support themselves." La. Civ. Code Art. 1488 (West 1952).

[14] La. Civ. Code Art. 1486 (West 1952).

will think differently. But the choices reflected by the intestate succession statute are choices which it is within the power of the State to make. The Federal Constitution does not give this Court the power to overturn the State's choice under the guise of constitutional interpretation because the Justices of this Court believe that they can provide better rules. Of course, it may be said that the rules adopted by the Louisiana Legislature "discriminate" against illegitimates. But the rules also discriminate against collateral relations, as opposed to ascendants, and against ascendants, as opposed to descendants. Other rules determining property rights based on family status also "discriminate" in favor of wives and against "concubines." [15] The dissent attempts to distinguish these other "discriminations" on the ground that they have a biological or social basis. There is no biological difference between a wife and a concubine, nor does the Constitution require that there be such a difference before the State may assert its power to protect the wife and her children against the claims of a concubine and her children. The social difference between a wife and a concubine is analogous to the difference between a legitimate and an illegitimate child. One set of relationships is socially sanctioned, legally recognized and gives rise to various rights and duties. The other set of relationships is illicit and beyond the recognition of the law. Similarly, the State does not need biological or social reasons for distinguishing between ascendants and descendants. Some of these discriminatory choices are perhaps more closely connected to

[15] "Those who have lived together in open concubinage are respectively incapable of making to each other, whether *inter vivos* or *mortis causa*, any donation of immovables; and if they make a donation of movables, it can not exceed one-tenth part of the whole value of their estate. Those who afterwards marry are excepted from this rule." La. Civ. Code Art. 1481 (West 1952).

our conceptions of social justice or the ways in which most dying men wish to dispose of their property than the Louisiana rules governing illegitimate children. It may be possible that some of these choices are more "rational" than the choices inherent in Louisiana's categories of illegitimates. But the power to make rules to establish, protect, and strengthen family life as well as to regulate the disposition of property left in Louisiana by a man dying there is committed by the Constitution of the United States and the people of Louisiana to the legislature of that State. Absent a specific constitutional guarantee, it is for that legislature, not the life-tenured judges of this Court, to select from among possible laws.[16] We cannot say that Louisiana's policy provides a perfect or even a desirable solution or the one we would have provided for the problem of the property rights of illegitimate children.[17] Neither can we say that Louisiana does not have the power to make laws for distribution of property left within the State.

We emphasize that this is not a case, like *Levy*, where the State has created an insurmountable barrier to this illegitimate child. There is not the slightest suggestion in this case that Louisiana has barred this illegitimate from inheriting from her father. Ezra Vincent could have left one-third of his property to his illegitimate daughter had he bothered to follow the simple formalities of executing a will. He could, of course, have legiti-

---

[16] "Now the law in question is nothing more than an exercise of the power which every state and sovereignty possesses, of regulating the manner and term upon which property real or personal within its dominion may be transmitted by last will and testament, or by inheritance; and of prescribing who shall and who shall not be capable of taking it." *Mager* v. *Grima*, 8 How. 490, 493 (1850). See *Lyeth* v. *Hoey*, 305 U. S. 183, 193 (1938).

[17] See Krause, Bringing the Bastard into the Great Society, A Proposed Uniform Act on Legitimacy, 44 Tex. L. Rev. 829 (1966).

mated the child by marrying her mother in which case the child could have inherited his property either by intestate succession or by will as any other legitimate child. Finally, he could have awarded his child the benefit of Louisiana's intestate succession statute on the same terms as legitimate children simply by stating in his acknowledgement of paternity his desire to legitimate the little girl. See *Succession of Saul Miller*, 230 So. 2d 417 (La. App. 1970).

In short, we conclude that in the circumstances presented in this case, there is nothing in the vague generalities of the Equal Protection and Due Process Clauses which empower this Court to nullify the deliberate choices of the elected representatives of the people of Louisiana.

Affirmed.

SUPREME COURT OF THE UNITED STATES

No. 5257.—October Term, 1970

Lou Bertha Labine, Natural Tutrix of Minor Child, Rita Nell Vincent, Petitioner, *v.* Simon Vincent, Administrator of the Succession of Ezra Vincent.	On Appeal From the Supreme Court of Louisiana.

[March 29, 1971]

Mr. Justice Harlan, concurring.

In joining the opinion of the Court, I wish to add a few words, prompted, I may say, by the dissenting opinion, which in my view evinces extravagant notions of what constitutes a denial of "equal protection" in the constitutional sense.

It is surely entirely reasonable for Louisiana to provide that a man who has entered into a marital relationship thereby undertakes obligations to any resulting offspring beyond those which he owes to the products of a casual liaison, and this whether or not he admits the fact of fatherhood in the latter case.* With respect to a substantial portion of a man's estate, these greater obligations stemming from marriage are imposed by the provision of Louisiana law making a man's legitimate children

*Louisiana law authorizes illegitimate children to claim support not only from both parents but from the parents' heirs. See p. 2, n. 2 *ante*. It thus goes considerably beyond the common law and statutes generally in force at the time the Fourteenth Amendment was adopted. These rarely did more than authorize public officials to bring an action directing the putative father to support a child who threatened to become a public charge. See 2 Kent's Commentaries *215 and nn. (b) and (c) (12th ed. O. W. Holmes 1873).

his forced heirs. For the remainder of his estate, these obligations are not absolute, but are conditional upon his not disposing of his property in other ways. With all respect to my dissenting Brethren, I deem little short of frivolous the contention that the Equal Protection Clause prohibits enforcement of marital obligations, in either the mandatory or the suppletive form. See H. M. Hart & A. Sacks, The Legal Process: Basic Materials on the Making and Application of Law 35–36 (tent. ed. 1958).

In addition to imposing these obligations, Louisiana law prohibits testamentary dispositions to one's illegitimate children. Even were my dissenting Brethren prepared to hold this rule of law unconstitutional, to do so would not affect the outcome of this case. First, appellant is a "natural" rather than an "illegitimate" child; and second, if her father desired her to have his property after his death, he did not manifest that desire in the appropriate way.

SUPREME COURT OF THE UNITED STATES

No. 5257.—October Term, 1970

Lou Bertha Labine, Natural Tutrix of Minor Child, Rita Nell Vincent, Appellant, *v.* Simon Vincent, Administrator of the Succession of Ezra Vincent.	On Appeal From the Supreme Court of Louisiana.

[March 29, 1971]

Mr. Justice Brennan, with whom Mr. Justice Douglas, Mr. Justice White, and Mr. Justice Marshall join, dissenting.

In my view, Louisiana's intestate succession laws, insofar as they treat illegitimate children whose fathers have publicly acknowledged them differently from legitimate children, plainly violate the Equal Protection Clause of the Fourteenth Amendment. The Court today effectively concedes this, and, to reach its result, resorts to the startling measure of simply excluding such illegitimate children from the protection of the Clause, in order to uphold the untenable and discredited moral prejudice of bygone centuries which vindictively punished not only the illegitimates' parents, but also the hapless, and innocent, children. Based upon such a premise, today's decision cannot even pretend to be a principled decision. This is surprising from Justices who have heretofore so vigorously decried decision-making rested upon personal predilections, to borrow the Court's words, of "life-tenured judges of this Court." *Ante*, at 7. I respectfully dissent.

I

In 1961, Ezra Vincent was 69 years old and Lou Bertha Patterson (now Lou Bertha Labine) was 41. They were unmarried adults living in rural, southwest Louisiana, outside the town of Lake Charles. Soon after meeting each other in 1961, Mrs. Patterson moved in with Mr. Vincent. Although they did not marry, Mrs. Patterson had a daughter by Mr. Vincent on March 15, 1962. The child's birth certificate identified the father and mother by name. Within two months, Mr. Vincent and Mrs. Patterson appeared before a notary public and executed a form, in accordance with Louisiana law, acknowledging that Mr. Vincent was the father of the child. A month later, the child's birth certificate was changed to give the child Mr. Vincent's name,[1] and she has always been known since as Rita Nell Vincent. By acknowledging the child, Mr. Vincent became legally obligated under state law to support her.[2] Mr. Vincent and Mrs. Patterson continued to live togther and raise Rita Nell until Mr. Vincent died in 1968. He left no will.

As natural tutrix of Mr. Vincent's only child, Rita Nell's mother brought this suit on the child's behalf seeking to have Rita Nell declared Mr. Vincent's sole heir. Applying Louisiana law,[3] the trial court dismissed the child's action and declared Mr. Vincent's collateral relations—his brothers and sisters—to be his heirs.[4]

---

[1] Louisiana law appears to direct that the birth certificate be changed only when the child has been legitimated. La. Rev. Stat. § 40:308 (West 1965).

[2] La. Civ. Code Ann. Art. 242 (West 1952).

[3] See Part II, *infra*.

[4] In addition, the trial court, despite uncontradicted testimony that the child required $192 per month for support, rejected the claim for alimony from her father's estate, as provided in Louisiana

The child appealed, arguing that to treat a publicly acknowledged illegitimate child differently from a legitimate child was a denial of equal protection and due process. The Louisiana intermediate appellate court affirmed in all respects, upholding the state statutory provisions against constitutional attack, "[h]owever unfair it may be to punish innocent children for the fault of their parents." 229 So. 2d 449, 452 (1969). The Louisiana Supreme Court declined review, and we noted probable jurisdiction. 400 U. S. 817 (1970).

II

The rationality and constitutionality of Louisiana's treatment of the illegitimate child can only be analyzed against the background of a proper understanding of that State's law. Under Louisiana law, legitimate children have an automatic right to inherit from their parents.[5] Legitimate children generally cannot be disinherited.[6]

---

law, La. Civ. Code Ann. Arts. 240–242, 243, 919 (West 1952), on the ground that the child was receiving $100 per month in Social Security and Veterans Administration benefits.

[5] La. Civ. Code Ann. Art. 1495 (West 1952) provides:

"In the cases prescribed by the two last preceding articles [legitimate children and parents], the heirs are called *forced heirs*, because the donor can not deprive them of the portion of his estate reserved for them by law, except in cases where he has a just cause to disinherit them." (Emphasis in original.)

[6] *Ibid.* A parent can only disinherit a legitimate child if the parent alleges a certain statutorily defined "just cause" in his will and in terms expresses his desire to disinherit the child. La. Civ. Code Ann. Arts. 1617–1620 (West 1952). Article 1621 of the Louisiana Civil Code specifies the "just causes" for which disinhersion is permitted:

"The just causes for which parents may disinherit their children are ten in number, to wit:

"1. If the child has raised his or her hand to strike the parent, or

Property cannot even be given away without taking account of the rights of a legitimate child, since the portion of the decedent's estate which can be given away or disposed of through donations *inter vivos* or *mortis causa* is sharply limited by law for the benefit of a person's legitimate children.[7] Actually the Louisiana Constitution protects this scheme of forced heirship which

---

if he or she has actually struck the parent; but a mere threat is not sufficient.

"2. If the child has been guilty, towards a parent, of cruelty, of a crime or grevious injury.

"3. If the child has attempted to take the life of either parent.

"4. If the child has accused a parent of any capital crime, except, however, that of high treason.

"5. If the child has refused sustenance to a parent, having means to afford it.

"6. If the child has neglected to take care of a parent become insane.

"7. If the child refused to ransom them, when detained in captivity.

"8. If the child used any act of violence or coercion to hinder a parent from making a will.

"9. If the child has refused to become security for a parent, having the means, in order to take him out of prison.

"10. If the son or daughter, being a minor, marries without the consent of his or her parents."

The persons seeking to take against the disinherited forced heir must prove the truth of the "just cause" alleged in the parent's will. *Pennywell* v. *George*, 164 La. 630, 114 So. 493 (1927). Disinhersion is not favored. *Succession of Reems*, 134 La. 1033, 64 So. 898 (1914).

[7] La. Civ. Code Ann. Art. 1493 (West 1952) provides, in pertinent part:

"Donations *inter vivos* or *mortis causa* can not exceed two-thirds of the property of the disposer, if he leaves, at his decease, a legitimate child; one-half, if he leaves two children; and one-third if he leaves three or a greater number."

See generally La. Civ. Code Ann. Arts. 1493–1518 (West 1952).

benefits the decedent's parents as well as his legitimate children.[8]

This enshrinement of forced heirship in the state constitution symbolizes Louisiana's extensive legal ordering of familial affairs. Louisiana's regulation of the family covers not merely the devolution of property upon the death of any member, but virtually every aspect of the duties owed by one family member to another, and the authority, particularly of the father, over the other members.[9] This reflects the derivation of Louisiana's legal traditions from the French, Spanish, and Roman civil law; they do not have their roots in English common law:

> "Countries which received the Roman law in one form or another have traditionally ordered relationships between citizens in terms of two institutions, family and obligation. . . . [T]he relationships formed by Romanist man were all grounded in one or both of these institutions. *His relationship with his family was determined by law,* it established his status, and this, in turn, qualified the relationships which he could make with those who were not his family. . . . [A] man's position within his family passed into the modern Roman law as the significant qualification to forming private legal relationships." Tucker, Sources of Louisiana's Law of Persons: Blackstone, Domat, and the French Codes, 44 Tulane L. Rev. 264, 275–276 (1970) (emphasis added).[10]

Thus it is that Louisiana law distinguishes between legitimate children and illegitimate children throughout

---

[8] La. Const. Art. 4, § 16 (1921).

[9] See, *e. g.*, La. Civ. Code Ann. Arts. 215–237 (West 1952).

[10] See generally Pelletier & Sonnenreich, A Comparative Analysis of Civil Law Succession, 11 Vill. L. Rev. 323 (1966).

that law's extensive regulation of family affairs.[11] But, for purposes of this case, I need only discuss those portions of Louisiana law which bear upon inheritance rights. Article 178 of the Louisiana Civil Code provides in full: "Children are either legitimate, illegitimate, or legitimated." La. Civ. Code Ann. Art. 178 (West 1952). Not all illegitimate children can be legitimated, however—only those whose parents do not have legitimate descendants or ascendants and could lawfully have married each other at the time of the child's conception, or those whose parents later marry can be legitimated.[12] An illegitimate child who can be legitimated becomes a "natural" child when his father formally acknowledges him. However, Article 206 of the Louisiana Civil Code provides that, "[i]llegitimate children, though duly acknowledged, can not claim the rights of legitimate children." Thus, the primary consequence under Louisiana succession law that flows from acknowledgment is that the natural child may inherit under a will, and inherits if there is no will, only after the father's other descendants,

---

[11] See, *e. g.*, La. Civ. Code Ann. Arts. 215–245 (West 1952).

[12] La. Civ. Code Ann. Art. 200 (West 1952) provides:

"A natural father or mother shall have the power to legitimate his or her natural children by an act passed before a notary and two witnesses, declaring that it is the intention of the parent making the declaration to legitimate such child or children. *But only those natural children can be legitimated who are the offspring of parents who, at the time of conception, could have contracted marriage. Nor can a parent legitimate his or her natural offspring in the manner prescribed in this article, when there exists on the part of such parent legitimate ascendants or descendants.*" (Emphasis added.)

La. Civ. Code Ann. Art. 198 (West 1952) provides:

"Children born out of marriage, except those who are born from an incestuous connection, are legitimated by the subsequent marriage of their father and mother, whenever the latter have formally or informally acknowledged them for their children, either before or after the marriage."

ascendants, collateral relations, and surviving spouse, but before the estate escheats to the State.[13] An illegitimate child whose parents could lawfully have married each other at the time of the child's conception, but who has not been publicly acknowledged, or an illegitimate child whose parents were not capable of marriage at the time of conception, may not inherit *at all*, either by will or intestate succession, "the law allowing them nothing more than a mere alimony." La. Civ. Code Ann. Art. 920 (West 1952).[14]

III

Under Louisiana law a legitimate child would have had an absolute right to inherit Mr. Vincent's estate; Mr. Vincent could not have totally disinherited such a child. This is a consequence of Louisiana's "forced heirship" law, in other words a consequence of a state decision, however contrary that might be to Mr. Vincent's own desires. Similarly in the present case, Mr. Vincent's illegitimate daughter, though duly acknowledged, is denied his intestate estate, not because he wished that result but because the State places her behind Mr. Vincent's collateral relations—indeed behind all his relations—in the line of succession.

The State's discrimination is clear and obvious.[15] Ordinarily, even in cases of economic regulation, this

---

[13] See Oppenheim, Acknowledgment and Legitimation in Louisiana—Louisiana Act 50 of 1944, 19 Tulane L. Rev. 325, 327 (1945).

[14] See Succession of Elmore, 124 La. 91, 49 So. 989 (1909).

[15] As Part II of this opinion makes clear, only parents of illegitimate children who could have married at the time of conception and who have no legitimate ascendants or descendants may legitimate those children by notarial act. See n. 12, *supra*. The Court relies on the fact that Mr. Vincent was within this narrow class of fathers of illegitimate children to suggest that Louisiana law allows fathers to decide whether or not to inherit their illegitimate children. *Ante*, at 7-8. Even as to this class, however, Louisiana law places the burden

Court will inquire, under the Equal Protection Clause of the Fourteenth Amendment, whether there is some "reasonable basis" for a discrimination in a state statute, or whether the discrimination is invidious. *E. g., Morey* v. *Doud*, 354 U. S. 457 (1957); *Williamson* v. *Lee Optical Co.*, 348 U. S. 483 (1955); *Yick Wo* v. *Hopkins*, 118 U. S. 356 (1886). Such an inquiry does not question the State's *power* to regulate; rather, it focuses exclusively on whether the State has legislated without the invidious discrimination that is forbidden by the Fourteenth Amendment.

For reasons not articulated, the Court refuses to consider in this case whether there is any reason at all, or any basis whatever, for the difference in treatment that Louisiana accords to publicly acknowledged illegitimates and to legitimate children. Rather, the Court simply asserts that "the power to make rules to establish, protect, and strengthen family life as well as to regulate the disposition of property left in Louisiana by a man dying there is committed by the Constitution of the United States and the people of Louisiana to the legislature of that State." *Ante*, at 7. But no one questions Louisiana's power to pass inheritance laws.[16] Surely the Court

---

on the father of a publicly acknowledged illegitimate child to take affirmative action to *inherit* that child, while virtually disabling the same father from disinheriting a legitimate child, or, at least, placing a burden of affirmative action on the father in order to *disinherit* the legitimate child. Thus, even as to this small group, the discrimination imposed by the State is clear.

[16] The only context in which this statement might have relevance would be in the context of the question, not presented in this case, of the power of Congress to regulate the devolution of property upon the death of citizens of the various States. In such a case, the question would indeed be whether the Constitution commits such power exclusively to the States. It so happens that this Court, in an opinion written by my Brother BLACK, has held that the Constitution does *not* commit the power to regulate intestate succession exclu-

cannot be saying that the Fourteenth Amendment's Equal Protection Clause is inapplicable to subjects regulable by the States—that extraordinary proposition would reverse 104 years of constitutional adjudication under the Equal Protection and Due Process Clauses. It is precisely state action which is subjected by the Fourteenth Amendment to its restraints. It is to say the least bewildering that a court that for decades has wrestled with the nuances of the concept of "state action" in order to ascertain the reach of the Fourteenth Amendment, in this case holds that the state action here, because it is state action, is insulated from these restraints.

Putting aside the Court's repeated emphasis on Louisiana's power to regulate intestate succession—something not questioned and wholly irrelevant to the present constitutional issue—only two passages in the Court's opinion even attempt an argument in support of today's result. First, the Court tells us that Louisiana intestate succession law favors some classes of a deceased's relatives over other classes. That is certainly true, but the Court nowhere suggests what bearing these other discriminations have on the rationality of Louisiana's discrimination against the acknowledged illegitimate. It is a little like answering a complaint of Negro school children against separate lavatories for Negro and white students by arguing that the situation is no different from separate lavatories for boys and girls, or for elementary school children and high school students.

---

sively to the States. *United States* v. *Oregon*, 366 U. S. 643, 649 (1961) ("The fact that this [federal] law pertains to the devolution of property does not render it invalid. Although it is true that this is an area normally left to the States, it is not immune under the Tenth Amendment from laws passed by the Federal Government which are, as is the law here, necessary and proper to the exercise of a delegated power.").

These other discriminations may be rational or irrational. But their only relevance to the rationality and constitutionality of the specific challenged discrimination is the light they throw, if any, on the basis for that discrimination. The conclusion the Court appears to draw from its itemization of other discriminations among a deceased's relatives is that Louisiana needs *no* justification at all for any of the distinctions it draws. That reasoning flies in the face not only of the Equal Protection and Due Process Clauses of the Fourteenth Amendment, but also of the very notion of a rule of law.

The only other hint at an attempt to support today's result may appear in the purported distinction of *Levy* v. *Louisiana, supra:* "We emphasize that this is not a case, like *Levy,* where the State has created an insurmountable barrier to this illegitimate child." *Ante,* at 7. There may be two implications in this statement: (1) that in *Levy,* there was an insurmountable barrier to recovery; and (2) that any discrimination which falls short of an "insurmountable barrier" is, without need for further analysis, permissible. As to the first, *Levy* involved an unacknowledged illegitimate child. Louisiana permitted an illegitimate child to recover in tort for the death of the child's mother, under the State's wrongful death act, only if the illegitimate child had been acknowledged. There was no insurmountable barrier to the child's recovery; if the mother had formally acknowledged the child, recovery would have been permitted. My Brother HARLAN's dissent emphasized this fact and argued that the State was entitled to rely on specified formalities. Plainly then *Levy* did not involve any "insurmountable barrier."

The Court's second implication—that any discrimination short of an "insurmountable barrier" is permissible—is one of those propositions the mere statement of which is its own refutation. *Levy,* as I have pointed out,

holds squarely to the contrary specifically in the context of discrimination against illegitimate children. And numerous other cases in this Court establish the general proposition that discriminations which "merely" disadvantage a class of persons or businesses are as subject to the command of the Fourteenth Amendment as discriminations which are in some sense more absolute.[17]

In short, the Court has not analyzed, or perhaps simply refuses to analyze, Louisiana's discrimination against acknowledged illegitimates in terms of the requirements of the Fourteenth Amendment.[18] Since I still believe that the Constitution does prohibit a State from denying any person the "equal protection of the laws," I must therefore undertake my own analysis to determine, at a minimum, whether there is any rational basis for the discrimination, or whether the classification bears any intelligible proper relationship to the consequences that flow from it.[19] See, *e. g.*, *Dandridge* v. *Williams*, 397

[17] *E. g.*, *Dandridge* v. *Williams*, 397 U. S. 471 (1970); *Morey* v. *Doud*, *supra*; *Hunter* v. *Erickson*, 393 U. S. 385 (1969); *Douglas* v. *California*, 372 U. S. 353 (1963); *Smith* v. *Cahoon*, 283 U. S. 553 (1931). Cf. *Plessy* v. *Ferguson*, 163 U. S. 537 (1896); *Brown* v. *Bd. of Educ.*, 347 U. S. 483 (1954).

[18] In one sentence in a footnote, the Court says, "Even if we were to apply the 'rational basis' test to the Louisiana intestate succession statute, that statute clearly has a rational basis in view of Louisiana's interest in promoting family life and of directing the disposition of property left within the State." *Ante*, at 4 n. 6. I agree that Louisiana has an interest in promoting family life and in directing the disposition of property left within the State. I do not understand how either of these interests provides any basis for Louisiana's discrimination against the acknowledged illegitimate, and the Court does not explain the relevance of these state interests.

[19] In view of my conclusion that the present discrimination cannot stand even under the "some rational basis" standard, I need not reach the questions whether illegitimacy is a "suspect" classification which the State could not adopt in any circumstances without showing a compelling state interest, or whether fundamental rights are involved,

U. S. 471 (1970); *McLaughlin* v. *Florida*, 379 U. S. 184, 190–191 (1964); *Morey* v. *Doud*, *supra*; *Gulf, C. & S. F. R. Co.* v. *Ellis*, 165 U. S. 150, 155 (1897).

Certainly, there is no biological basis for the State's distinction. Mr. Vincent's illegitimate daughter is related to him biologically in exactly the same way as a legitimate child would have been. Indeed, it is the identity of interest "in the biological and in the spiritual sense," *Levy* v. *Louisiana*, 391 U. S., at 72, and the identical "intimate, familial relationship," *id.*, at 71, between both the legitimate and illegitimate child, and their father, which is the very basis for appellant's contention that the two must be treated alike.

Louisiana might be thought to have an interest in requiring people to go through certain formalities in order to eliminate complicated questions of proof and the opportunity for both error and fraud in determining paternity after the death of the father. This argument, of course, was the focal point of the dissent in *Levy* and *Glona*. I leave aside, for the moment, the fact that the holdings of those two cases indicate that this consideration is insufficient to justify a difference in treatment when there is no dispute over the fact of parentage. For my Brother HARLAN's dissenting opinion in those cases explicitly recognized that the State's interest in this regard is fully satisfied by a formal public acknowledgement. 391 U. S., at 80. When a father has formally acknowledged his child or gone through any state authorized formality for declaring paternity, or when there has been a court judgment of paternity, there is no possible

---

which also would require a showing of a compelling state interest. See *Levy* v. *Louisiana*, 391 U. S. 68, 71 (1968); *Harper* v. *Virginia Board of Elections*, 383 U. S. 663 (1966); *Skinner* v. *Oklahoma*, 316 U. S. 535 (1942). This Court has generally treated as suspect a classification which discriminates against an individual on the basis of factors over which he has no control.

difficulty of proof, and no opportunity for fraud or error. This purported interest certainly can offer no justification for distinguishing between a formally acknowledged illegitimate child and a legitimate one.

It is also important not to obscure the fact that the formality of marriage primarily signifies a relationship between husband and wife, not between parent and child. Analysis of the rationality of any state effort to impose obligations based upon the fact of marriage must, therefore, distinguish between those obligations which run between parties to the marriage and those which run to others. My Brother HARLAN, unlike his colleagues in the majority, concedes that the Equal Protection Clause requires a justification for Louisiana's discrimination against illegitimates, and he attempts one; he argues that it is reasonable for a State to impose greater obligations on a man in respect to his wife and their children than in respect to other women and any other children of whom he may be the father. In other words, contrary to the Louisiana court below, he apparently believes that Louisiana's discrimination against illegitimates reflects a state policy that would discourage marriage by imposing special burdens, such as those of forced heirship, upon those who enter into it. However that may be, such force as his argument may have stems directly from its lack of specificity. Imposition by a State of reciprocal obligations upon husband and wife which are not imposed upon those who do not enter into a formalized marriage relationship is based upon the assumptions (1) that marriage may be promoted through pressure applied on or by the party seeking the benefit of obligations imposed by the married status, and (2) that in any event the choice is entirely within the control of the two individuals concerned. These elements are entirely lacking when we consider the relationship of a child *vis-a-vis* its parents. Pre-

cisely this point was made approvingly by Chancellor Kent, relied upon by my Brother HARLAN, early in the 19th century:

> "This relaxation in the laws of so many of the states, of the severity of the common law [discrimination against illegitimates] rests upon the principle that the relation of parent and child, which exists in this unhappy case, in all its native and binding force, ought to produce the ordinary legal consequences of that consanguinity." 2 Kent Commentaries *214 (12th ed., O. W. Holmes, 1873).[20]

Intestate succession laws might seek to carry out a general intent of parents not to provide for publicly acknowledged illegitimate children. However, as the summary of Louisiana law I have made shows, one of the primary hallmarks of Louisiana's civil code is its detailed, extensive regulation of the family relationship. Its discrimination against the illegitimate in matters of inheritance and succession is official state policy, completely

---

[20] The concurring opinion suggests that the legal obligation to support the illegitimate child imposed by Louisiana law goes "considerably beyond the common law and statutes generally in force at the time the Fourteenth Amendment was adopted." *Ante*, at 2. The authority cited by the concurrence for this proposition describes early 19th century American law on the subject as follows: "The mother, or reputed father, is generally in this country chargeable by law with the maintenance of the bastard child; and in New York it is in such a way as any two justices of the peace shall think meet; and the goods, chattels, and real estate of the parents are seizable for the support of such children, if the parents have absconded. The reputed father is liable to arrest and imprisonment until he gives security to indemnify the town chargeable with the maintenance of the child. These provisions are intended for the public indemnity, and were borrowed from the several English statutes on the subject; and similar regulations to coerce the putative father to maintain the child, and indemnify the town or parish, have been adopted in the several states." 2 Kent's Commentaries *215 (12th ed., O. W. Holmes, 1873).

negating any argument that such discrimination merely represents a legislative judgment about the probable wishes of a deceased or the desires of most persons in similar situations. The opinion of the state court below itself eliminates that possibility. The Louisiana court affirmatively states that the disinheritance of acknowledged illegitimates is in furtherance of specific state policy goals—goals which are unrelated to parents' intentions. 229 So. 2d, at 452. Finally, viewing the general statutory treatment of illegitimates as a whole, particularly the facts that only a narrow class of fathers can legitimate their children by declaration, and that unacknowledged and "adulterous" illegitimates are prohibited from inheriting even by will, I think the conclusion is compelled that Louisiana's discrimination represents state policy, not an attempt to aid in the effectuation of private desires.

Even if Louisiana law could be read as being based on a legislative judgment about parents' intent, the present discrimination against illegitimates could not stand. In order to justify a discrimination on the ground that it reflects a legislative judgment about the desires of most persons in similar situations, there must be some rational basis [21] for finding that the legislative classification does reflect those persons' desires or intentions as a general matter. The Court makes no argument that fathers who have publicly acknowledged their illegitimate children generally intend to disinherit them. No Louisiana court opinion or Louisiana legislative pronouncement that I can discover, nor the Attorney General of Louisiana in this case, has ever argued that the Louisiana scheme reflects the general intentions of fathers of illegitimate children in that State. Indeed, the state court below justified the discrimination on the ground that "the denial of inheritance rights to illegitimates might reasonably be

[21] But see n. 19, *supra*.

viewed as encouraging marriage and legitimation of children." 229 So. 2d, at 452. Such denial could encourage marriage only if fathers generally desire to leave their property to their illegitimate children; otherwise, disinheritance would not operate as a sanction to encourage marriage.

Moreover, logic and common experience also suggest that a father who has publicly acknowledged his illegitimate child will *not* generally intend to disinherit his child. A man who publicly announces that he has fathered a child out of wedlock has publicly claimed that child for his own. He has risked public opprobrium, or other sanctions, to make the public announcement. Surely, it does not follow that he will generally desire to disinherit that child and further discredit his reputation by refusing to contribute to his own child at death. All the writing cited to us, including a United Nations study report,[22] an English study commission,[23] the proposed Uniform Probate Code,[24] and a variety of law review commentary in this country,[25] suggest precisely

---

[22] Subcommission on Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights, United Nations Economic and Social Council, Study of Discrimination against Persons Born Out of Wedlock: General Principles on Equality and Non-Discrimination in Respect of Persons Born out of Wedlock, U. N. Doc. E/CN. 4 Sub. 2/L 453 (Jan. 13, 1967).

[23] Stone, Report of the Committee on the Law of Succession in Relation to Illegitimate Persons, 30 Mod. L. Rev. 552 (1967).

[24] National Conference of Commissioners on Uniform State Laws, Uniform Probate Code § 2–109 (Off. Text 1969).

[25] Note, Illegitimacy, 26 Brooklyn L. Rev. 45 (1959); Krause, Equal Protection for the Illegitimate, 65 Mich. L. Rev. 477 (1967); Krause, Bringing the Bastard into the Great Society—A Proposed Uniform Act on Legitimacy, 44 Tex. L. Rev. 829 (1966); Gray & Rudovsky, The Court Acknowledges the Illegitimate: *Levy* v. *Louisiana* and *Glona* v. *American Guarantee & Liability Insurance Co.*, 118 U. Pa. L. Rev. 1 (1969); Note, The Rights of Illegitimates Under Federal Statutes, 76 Harv. L. Rev. 337 (1962).

the opposite conclusion. Moreover, Louisiana is the only State in the country which denies illegitimate children rights of inheritance from the mother equal to those of legitimate children,[26] and one of only four state legislatures that have expressly provided that the illegitimate child may not inherit from his father.[27] The legislatures of 20 States by statute allow acknowledged illegitimate children to inherit equally from their fathers.[28] Three States grant equal rights of inheritance from the father regardless of acknowledgement.[29] The legislatures of the other 23 States have not passed upon the question.

The Court nowhere mentions the central reality of this case: Louisiana punishes illegitimate children for the misdeeds of their parents. The judges of the Third Circuit Court of Appeal of Louisiana, whose judgment the Court here reviews, upheld the present discrimination "[h]owever unfair it may be to punish innocent children

---

[26] See the table summarizing state statutes in Note, Illegitimacy, 26 Brooklyn L. Rev. 45, 76–79 (1959). In 1959, New York as well as Louisiana did not allow illegitimate children to inherit equally from their mothers. New York has since changed its law. N. Y. Est., Powers & Trusts Law § 4.12 (a)(1) (McKinney 1967).

[27] Hawaii Rev. Laws § 577–14 (1968); Ky. Rev. Stat. § 391.090 (1969); Pa. Stat. Ann. Tit. 20, § 1.7 (1950).

[28] Cal. Prob. Code § 255 (West Supp. 1970); Colo. Rev. Stat. Ann. § 153–2–8 (1963); Fla. Stat. Ann. § 731.29 (1964); Ga. Code Ann. § 74–103 (1935); Idaho Code § 14–104 (1947); Ind. Ann. Stat. § 6–207 (1953) [adjudication of paternity required]; Iowa Code Ann. § 633.222 (1964); Kan. Stat. Ann. § 59–501 (1964); Mich. Stat. Ann. § 27.3178 (153) (Supp. 1970); Minn. Stat. Ann. § 525.172 (1969); Mont. Rev. Codes Ann. § 91–404 (1964); Neb. Rev. Stat. § 30–109 (1964); Nev. Rev. Stat. § 134.170 (1967); N. M. Stat. Ann. § 29–1–18 (1953); N. Y. Est., Powers & Trusts Law § 4–1.2 (McKinney 1967) [order of filiation required]; Okla. Stat. Ann. tit. 84, § 215 (1970); S. D. Compiled Laws Ann. § 29–1–15 (1967); Utah Code Ann. § 74.4.10 (1953); Wash. Rev. Code § 11–04–080 (1967); Wis. Stat. Ann. § 237.06 (Supp. 1970).

[29] Ariz. Rev. Stat. Ann. § 14–206 (A) (1956); N. D. Cent. Code § 56–01–05 (Supp. 1969); Ore. Rev. Stat. §§ 111.231; 109.060 (1957).

for the fault of their parents . . . ." 229 So. 2d, at 452. It is certainly unusual in this country for a person to be legally disadvantaged on the basis of factors over which he never had any control. "Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality." *Hirabayashi* v. *United States*, 320 U. S. 81, 100 (1943). The state court below explicitly upheld the statute on the ground that the punishment of the child might encourage the parents to marry.[30] If that is the State's objective, it can obviously be attained far more directly by focusing on the parents whose actions the State seeks to influence. Given the importance and nature of the decision to marry, cf. *Boddie* v. *Connecticut*, — U. S. — (1971), I think that disinheriting the illegitimate child must be held to "bear no intelligible proper relation to the consequences that are made to flow" from the State's classification. *Glona* v. *American Guarantee Co.*, 391 U. S. 73, 81 (1968) (HARLAN, J., dissenting).

In my judgment, only a moral prejudice, prevalent in 1825 when the Louisiana statutes under consideration were adopted, can support Louisiana's discrimination against illegitimate children. Since I can find no rational basis to justify the distinction Louisiana creates between an acknowledged illegitimate child and a legitimate one, that discrimination is clearly invidious.[31] *Morey* v.

[30] The state court also argued that Louisiana's disinheritance of the illegitimate would serve the State's interest in the stability of land titles, by avoiding "the disruptions and uncertainties to result from unknown and not easily ascertained claims through averments of parentage . . . ." 229 So. 2d, at 452. This is simply a variation on the State's interest in relying on formalities, see 12–13, *supra*, which is completely served by public acknowledgement of parentage and simply does not apply to the case of acknowledged illegitimate children.

[31] See n. 19, *supra*.

Doud, 354 U. S. 457 (1957). I think the Supreme Court of North Dakota stated the correct principle in invalidating an analogous discrimination in that State's inheritance laws: "This statute, which punishes innocent children for their parents' transgressions, has no place in our system of government, which has as one of its basic tenets equal protection for all." *In re Estate of Jensen*, 162 N. W. 2d 861, 878 (N. D. 1968).